

***United States Court of Appeals
for the Second Circuit***



EXHIBITS

77-6015 WF
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SENATE

{ REPORT
No. 91-550

SOCIAL SECURITY APPEALS AND ADMINISTRATION *B*

DECEMBER 12, 1975.—Ordered to be printed

MR. LONG, from the Committee on Finance,
submitted the following

REPORT

[To accompany H.R. 10727]

The Committee on Finance, to which was referred the bill (H.R. 10727) to amend the Social Security Act to expedite the holding of hearings under titles II, XVI, and XVIII by establishing uniform review procedures under such titles, having considered the same, reports favorably thereon with an amendment and an amendment to the title and recommends that the bill as amended do pass.

I. SUMMARY OF THE BILL

The bill as passed by the House of Representatives made certain modifications in the provisions of the Social Security Act dealing with the appeals process under programs administered by the Social Security Administration. The committee modified the effective date of one of the provisions in the House bill and added to the bill a number of amendments as described below.

SOCIAL SECURITY HEARINGS AND APPEALS

The programs administered by the Social Security Administration presently have a huge backlog of some 103,000 cases awaiting a hearing. The committee bill would attempt to alleviate this problem by making certain changes in the social security hearings and appeals processes. The bill would make the provisions of law governing hearings and judicial review under the supplemental security income (SSI) program virtually identical to those of the social security cash benefit and medicare programs. It would permit the Social Security Administration to use existing SSI hearing examiners to also hear

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Exhibit
White v. Mathews # 77-6015

social security and medicare cases between now and the end of 1978. In addition, the bill would change the time in which a person could request a hearing after a claim had been disallowed. For both social security cases and SSI cases, the time would be 60 days—an increase from 30 days for SSI claims and a decrease from 6 months for social security claims. The bill as passed by the House and as approved by the committee is effective on enactment except that the effective date of the reduction in the time for filing a request for hearings in social security cases would be March 1, 1976.

POLICEMEN AND FIREMEN IN WEST VIRGINIA

The Social Security Amendments of 1972 included a provision which allowed the State of West Virginia to modify its social security coverage agreements so as to provide social security protection to certain policemen and firemen who had erroneously paid social security taxes in the belief that they were covered. Under the 1972 amendments, the State of West Virginia had to amend its agreement with the Social Security Administration before 1974. The State, however, has not made the necessary amendment in its agreement, and the committee bill provides an extension through 1977 of the time in which the agreement may be changed.

DEPOSIT OF SOCIAL SECURITY CONTRIBUTIONS BY STATE AND LOCAL GOVERNMENTS

Under the committee bill, the Secretary of Health, Education, and Welfare would be required to give notice at least 18 months in advance of any changes he proposes to make in the way in which social security contributions are paid by State and local governments. This would assure that States would be given ample leadtime to implement any changes and would also give Congress an opportunity to review any changes which the Secretary might propose.

ANNUAL REPORTING OF SOCIAL SECURITY WAGES

The committee bill includes a provision which is designed to reduce the tax reporting burdens of the nation's employers. Under the provision, the Secretaries of the Treasury and of Health, Education, and Welfare would be given the authority needed to exchange information so that social security reports of individual earnings could be made once each year rather than once each quarter.

The provision would not affect the responsibility of employers for collection and payment of social security taxes nor would it change the requirements as to when these payments are due. It would not have any effect on the way in which State and local Governments pay or report social security contributions to the Social Security Administration. Payments by both private employers and State and local Government units would continue to be made in the same way that they are made under existing law.

II. GENERAL EXPLANATION OF THE BILL

A. SOCIAL SECURITY HEARINGS AND APPEALS

NEED FOR LEGISLATION

The programs administered by the Social Security Administration now have a huge backlog of some 103,000 cases awaiting hearing. Half of all hearings take more than seven months to process, and the average processing time from initial application to hearing decision is some 20 months. A major barrier to reducing the backlog is the inability to use the hearing examiners appointed for the supplemental security income program for cases involving eligibility under Title II of the Social Security Act. Although the major factor in both SSI and title II hearings is the title II definition of disability, the Civil Service Commission overruled the Department of Health, Education, and Welfare and refused to allow that agency to employ administrative law judges to conduct SSI hearings.

Within recent months the Social Security Administration Bureau of Hearings and Appeals has made significant gains in increasing the productivity of administrative law judges (ALJs) with the result that the current case backlog is being reduced by 1,000 cases a month. If the authority in this bill is enacted it has been estimated that the hearing backlog will be reduced by 3,000 a month so that in 18 months cases can be adjudicated within 90 days.

While the committee thus expects that this bill will significantly alleviate the current crisis situation with respect to social security hearings, it is aware that suggestions have been made for more basic structural changes in the hearings procedures and the administration of the disability programs. The committee notes that the report of the House of Representatives on this bill indicates an intent to undertake comprehensive social security legislation in 1976 in connection with which such changes could be considered. The House report also recommends that the Social Security Administration authorize the Center for Administrative Justice to make a study of the social security appeals procedures and make recommendations for any structural changes relating to improving both the speed and quality of social security adjudications. This study would address the issue of whether the current appeals system under the Administrative Procedure Act (APA) is in the public interest together with such subjects as the appropriate qualifications, method of appointment, and position and grade classification of social security ALJs.

CONFORMING SSI AND SOCIAL SECURITY APPEALS PROCEDURES

(Section 1 of the Bill)

The first provision of the bill would amend Section 1631(c) of the Social Security Act to provide the same rights to hearing and administrative and judicial review with respect to claims under title XVI (Supplemental Security Income) of the Act as apply to title II

(social security) and title XVIII (medicare) claims under section 205(b) and 205(g) of the Act. This is necessary to override an interpretation of the Civil Service Commission that the Administrative Procedure Act was not applicable to SSI hearings and which required the appointment of non-APA hearing officers who could not hear social security and medicare cases. This action greatly exacerbated the current hearing crisis and the validity of SSI hearings has been challenged in the courts as second class justice. The committee bill will put this matter to rest by clearly providing on-the-record administrative hearings and judicial review of a parallel nature for social security, SSI, and medicare claimants.

The principal modifications to section 1631(c), which now provides general authority to the Secretary of Health, Education, and Welfare to conduct hearings on SSI appeals, would be:

- (1) the specific requirement that decisions after a hearing must be on the basis of evidence adduced at the hearing;
- (2) an increase in the period during which requests for review must be filed from 30 days to 60 days;
- (3) the addition of specific authority for the Secretary to hold hearings and make findings of fact, administer oaths, examine witnesses and receive evidence; and authority to receive evidence at a hearing even though inadmissible under the rules of evidence applicable to court procedure;
- (4) to make the final determinations of the Secretary subject to the "substantial evidence rule" upon judicial review by eliminating language now in section 1631(c)(3) which provides that the determinations of the Secretary "as to any fact shall be final and conclusive and not subject to review by any court".

The principal effect of this last modification is to apply the same rules of judicial review to title XVI cases as apply to title II cases. By removing this language from title XVI findings of fact of the Secretary in SSI cases, if supported by substantial evidence, shall be conclusive as are such findings under title II. The committee believes that both programs should be under the "substantial evidence rule", but that this should not be interpreted by the courts as a license to vary from strict adherence to its principles. With over 4,000 social security disability cases now pending in the United States District Courts, and the possibility of a similar caseload developing in the SSI program, when its appeals are fully felt, making *de novo* factual determinations at the judicial level could result in very serious problems for the federal judiciary and the social security program.

REPEAL OF SPECIAL APPOINTMENT AUTHORITY

(Section 2 of the Bill)

The committee bill would repeal section 1631(d)(2) of the Social Security Act.

This is the section of the law under which, pursuant to Civil Service Commission interpretation, non-APA hearing examiners have been appointed. The continuation of this authority is inappropriate inasmuch as title XVI cases in the future will require APA hearing officers. The committee believes that an adequate supply of APA

hearing officers can be obtained from the current pool of SSI hearing examiners and Black Lung ALJs who meet, or will meet, the requirements for regular appointments and through the on-going recruitment by the Civil Service Commission of ALJs in the private and governmental sectors.

USE OF SSI HEARING EXAMINERS FOR SOCIAL SECURITY AND MEDICARE CASES

(Section 3 of the Bill)

The committee bill also grants authority for those SSI hearing examiners (who have been appointed under section 1631 (d) (2) to hear cases under titles II, XVI, and XVIII until December 31, 1978 as temporary administrative law judges if the Secretary of HEW finds it will promote the achievement of the objectives of these titles. It is the committee's understanding that the Secretary will make this finding as to all SSI hearing examiners who have been appointed. The committee also understands that now virtually all the temporary Black Lung judges hold SSI hearing examiner appointments and this would provide the Bureau of Hearings and Appeals the 200 judges it needs to reduce the backlog. Furthermore, by the end of 1978, all SSI examiners will have acquired sufficient adjudicative experience to meet the experience requirement for appointment as regular ALJs. They would, as they met the experience requirement, be afforded the opportunity to be placed on the register for regular ALJ appointment on a merit basis under the regular Civil Service procedures.

It is hoped that these requirements and procedures will be applied in a manner to effectively serve the needs of the Social Security Act programs. The performance of the Civil Service Commission Office of Administrative Law Judges in overruling the administering agency (HEW) in its legal opinion that SSI was under the APA does not reflect the will of Congress.

The Office of Administrative Law Judges should be mindful of its ministerial responsibilities in supplying registers from which adequate numbers of ALJs can be hired by HEW to adjudicate social security claims. There are indications that in the past these registers have not been supplied with the speed and with the number of candidates thereon which HEW needed to get better control over the hearings backlog. In evaluating current SSI hearings examiners for regular ALJ appointments great weight should be given to experience in actually adjudicating social security and Black Lung cases and roadblocks should not be created through unduly lengthy and bureaucratic appointment procedures.

To avoid any possible misinterpretation, the bill specifically provides that the temporary hearing officers authorized to conduct hearings under the bill would be subject to all the provisions of the Administrative Procedure Act that assure independence from agency control. These provisions would include: Subchapter II of chapter 5 of title 5 of the United States Code (the substantive provisions relating to APA adjudications); the second sentence of section 3105, of title 5 U.S.C. (assignment of cases in rotation and the prohibition of assignment to duties inconsistent with their responsibilities as hear-

ing officers); and the deeming of them as hearing examiners appointed under section 3105 so that, among other things, they would be exempt from agency performance rating requirements (5 U.S.C. 1301(2) (E)) and agency determination of performance acceptability for in-grade increases (5 U.S.C. 5335(a) (3) (B)) and making Civil Service responsible for determining their pay levels (5 U.S.C. 5362), removal for cause (5 U.S.C. 7521), and general administration (5 U.S.C. 1305). The committee is unaware of any prejudicial "agency control" exercised by HEW under the parallel provisions it has established for SSI hearing examiners. However, the specific application of these provisions of the APA, together with the provisions of the bill applying the same procedural safeguards to review proceedings under title XVI as apply under title II, should eliminate the possibility of the courts determining that SSI review procedures do not comply with the Administrative Procedure Act or due process.

Moreover, the specific enumeration of these provisions of the APA as applicable to the temporary ALJs should not be interpreted to make these adversary proceedings or otherwise "judicialize" procedures under title II, XVI, and XVIII. The enumeration of these provisions also should in no way suggest that they are not applicable to the regular Social Security ALJs. The committee and the Department of HEW consistently over the years have declared that the language in title II (and under the provisions of this bill, title XVI) of the Social Security Act call for "on-the-record" hearings which invoke the provisions of the Administrative Procedure Act.

Although the bill is silent on the grade level of temporary Administrative Law Judges, the committee notes that the report of this legislation received from the Department indicates agreement with the view expressed in the report of the House of Representatives on the bill that a grade level of GS-14 would be appropriate.

REDUCTION OF APPEAL PERIOD FOR SOCIAL SECURITY CLAIMS

(Section 4 of the Bill)

The Committee bill would reduce the period within which social security and medicare appeals may be taken at both the reconsideration and hearing level from six months to 60 days.

The committee believes that a 6-month time period is unnecessarily long for a claimant to appeal a title II or title XVIII decision on his claim. In fact, because a mandatory reconsideration has been adopted administratively under this authority, a double period may result. An individual whose claim has been initially denied has a full six months to decide whether to request a reconsideration and then another 6 months to decide whether to appeal to an administrative law judge.

More than 65 percent of the hearings requested are filed within 60 days after the claimants receive notification that their reconsideration had not resulted in the decision being overturned. If the time limit is reduced to 60 days, there may be a decrease in the number of hearing requests filed. Those individuals who do not file for review within 60 days may file a new application for benefits on the basis of new evidence or changed condition which in most instances can be adjudicated more speedily at the initial determination level. Also, reducing

the time limit would result in a reduction in administrative costs and, perhaps most importantly would be beneficial in that less case development would be needed at the hearing level. The need for additional development has played a major role in delaying decisions in appealed cases. Often hearings filed in the 4th, 5th, or 6th months following the reconsideration determination are virtually new cases and call for extensive medical and vocational development which takes the ALJ away from his primary role of deciding cases.

In order to assure that the rights of individuals are not adversely affected, the committee has provided that this change not be effective until March 1, 1976. This will allow the Social Security Administration time to advise social security applicants of the shortened length of time for filing an appeal.

B. WEST VIRGINIA POLICEMEN AND FIREMEN

(Section 6 of the Bill)

The committee has been informed that certain policemen and firemen in West Virginia have been paying social security contributions but that the Social Security Administration ruled (and the courts have agreed) that the law does not provide for this coverage. Under the law, policemen in West Virginia are not allowed coverage if they are also covered under a State or local retirement program and firemen under a State or local retirement program are not allowed coverage unless certain specified conditions are met. The laws of West Virginia require certain local governments to provide a retirement program for their employees, including policemen and firemen, but some of the local governments have not provided the programs and instead have relied on social security coverage to provide retirement, disability, and survivor insurance for their employees. Because this coverage for policemen and firemen, but not for other employees has been determined to be in conflict with the present law, the committee bill includes a provision which will permit the State of West Virginia to modify its social security coverage agreements to provide retroactive coverage for the policemen and firemen who have paid social security contributions in the past and to continue this coverage in the future for those police and fire departments affected.

A similar provision was included in the Social Security Amendments of 1972 but the State did not make the necessary modifications in its social security coverage agreements within the time limits specified in that legislation. The present bill will extend the time when such a change may be made to 1977.

C. DEPOSIT OF SOCIAL SECURITY CONTRIBUTIONS BY STATE AND LOCAL GOVERNMENTS

(Section 7 of the Bill)

Employees of State and local governments are not mandatorily covered under the social security program. Under legislation enacted in 1950, however, States are permitted on a voluntary basis to enter into agreements with the Department of Health, Education, and Welfare for the coverage under the program of State and local employees.

The extent of such coverage varies from State to State and the agreements under which each State covers certain of its employees and the employees of political subdivisions are quite complex. Under these coverage agreements, States are required to pay to the Social Security Administration contributions which are the equivalent of the social security taxes which the Internal Revenue Service collects from private employers.

The Social Security Act provides that, insofar as practicable, the Social Security Administration should require States to deposit these contributions in a manner consistent with the requirements for depositing social security taxes imposed on private employers. Up to the present, however, the requirements imposed upon the States with respect to the frequency of deposit have been quite different from the requirements imposed upon private employers. Large private employers are required to deposit social security taxes withheld as often as weekly, and moderate-sized employers must make these deposits monthly. Quarterly deposits are permitted for employers with quite small payrolls. In the case of State and local Government employees, however, the present regulations of the Department of Health, Education, and Welfare require that deposits be made by the middle of the second month after the end of each quarter.

The Social Security Administration has indicated that it is considering the promulgation of a regulation which would require the States to deposit social security contributions more frequently. The agency believes that such a change would result in significantly higher interest earnings for the social security trust funds and that the change would be consistent with the provision of law requiring that the State procedures be comparable with the procedures used by private employers. State social security administrators have expressed doubts that such a change is, in fact, practicable since many local governments have relatively unsophisticated accounting arrangements. Moreover, the argument is made that such a change represents a unilateral revocation of the voluntary agreements under which the State coverage was established many years ago.

The Committee is advised that the Social Security Administration and the State social security administrators are jointly undertaking a study designed to develop more adequate information as to the actual implications of a change in existing deposit procedures. To assure that this information will be available before any change is made and to assure that no change in deposit procedures will be abruptly instituted, the committee bill would prohibit the Department of Health, Education, and Welfare from making any significant changes in the deposit requirements without allowing lead time of at least 18 months from the time of publication in the Federal Register of the final regulations making such a change.

The committee believes that this amendment will permit the Department to develop whatever proposal with respect to the deposit of State and local contributions it may feel is justified on the basis of information obtained from the current study while at the same time assuring that Congress will have adequate notice of any such proposed change and will be able to enact further legislation as may appear appropriate.

D. ANNUAL REPORTING OF SOCIAL SECURITY WAGES

(Section 8 of the Bill)

The committee added a provision to the House-passed bill which is designed to reduce the tax reporting burden of the Nation's employers. Under the committee provision, the Secretaries of the Treasury and of Health, Education, and Welfare would be provided with the authority they need to exchange information on a basis which would make it possible to change social security tax reporting from a quarterly basis to an annual basis. The committee provision originated in the recommendations of several Governmental study groups and its adoption would conclude approximately two decades of study and negotiation between the two departments involved.

Under existing Treasury department regulations, employers are required to submit quarterly reports of the wages paid to their employees which are subject to social security taxes. These reports, on Treasury Form 941-A, must list each employee by name, social security account number, and total wages paid to the employee with respect to which social security taxes are payable. The preparation and filing of this quarterly report involves considerable effort and expense on the part of employers particularly in the case of small and medium-sized companies which do not have the advantage of computerized payroll systems. An April 17, 1973 report issued by the Select Committee on Small Business stated that its Subcommittee on Government Regulation had found studies indicating that the annual cost to small employers of submitting this form might total as much as \$235 million (Senate Report No. 93-125, p. 49).

The committee provision would make possible the elimination of quarterly reports by changing certain technical requirements of the social security program which currently depend on data from the Form 941-A and by providing the Internal Revenue Service and the Social Security Administration authority which would enable them to enter into an agreement for cooperative processing of a revised annual wage reporting form (i.e. Form W-2) in a manner which will most effectively and efficiently provide each agency with the information it requires. Thus, in place of the present requirement that each employer submit 5 reports per year with respect to each employee (4 quarterly reports on Form 941-A and 1 annual report on Form W-2), the committee provision makes possible a revision in Treasury Department regulations to permit employers to file a single consolidated annual wage report for each employee which will show both his total earnings for the year and the quarterly breakdown of his social security earnings.

The present Form 941-A provides for wage information used by the Social Security Administration as the source of data for computing the automatic increases in the amount of annual earnings subject to social security taxes (the social security "wage base") and in the amount of annual earnings which a beneficiary may have without any reduction in his social security benefits (the "exempt amount.") Under existing law, whenever an increase in the cost of living triggers an automatic

social security benefit increase, the Secretary of Health, Education, and Welfare is required to promulgate regulations increasing the wage base and the exempt amount.

Under current law these increases are based on the percentage rise in the average amount of taxable wages up to the first quarter of the year in which the determination of the amount of the increase is made, and the increases become effective as of the start of the following year. If employee wages are reported annually rather than quarterly, however, the necessary data to compute the increase in wage base and exempt amount would not be available until well after the beginning of the year in which the increases are to be effective. The committee provision, therefore, moves back by one year the base period to be used for determining the amount of increases in taxable wages so that the Secretary of Health, Education, and Welfare will have sufficient time to make his determinations on the basis of an annual wage report. (However, no change is made in the benefit increase provisions of present law.) Thus, for example, the increase in the wage base and exempt amount which is to be effective as of January 1, 1977 would be computed according to the growth rate in average taxable wages from the first quarter of 1974 to the first quarter of 1975 rather than according to the growth rate from the first quarter of 1975 to the first quarter of 1976.

Current law bases the automatic increases in the wage base and exempt amount on the rise in average taxable wages from the first quarter of one year to the first quarter of the next year rather than on the annual increase in wage levels generally because the Social Security Administration does not now receive the information necessary to make a determination based on average annual wages in all employment. When the revised reporting regulations made possible by the committee provision are implemented, this information will become available. Accordingly, the committee bill provides that, starting in 1978, determinations as to the amount of future automatic increases in the annual amount of earnings subject to social security taxes and in the amount of annual earnings a beneficiary can have without reduction in benefits will be based on the growth from year to year in average annual wages in all employment rather than on the growth of the amount of wages subject to social security taxes in the first quarter of each year. As a practical matter, it is estimated that there will be negligible impact on the way in which the automatic increase provisions will operate, since the annual rate of growth is approximately the same for average first quarter taxable wages, average annual wages in employment covered by social security, and average annual wages in the national economy.

The committee provision would not affect the responsibility of employers for the collection and payment of social security taxes nor would it alter in any way the requirements as to the dates on which payments of these taxes are due. The provision would make no change in the amount of work required in order to qualify for social security benefits and no change would be made in the way benefits are computed. Moreover, it would not have any impact on the financial status of the social security program.

In addition, the committee amendment provides that the amendment would have no effect on the way in which State and local governments report earnings to the Social Security Administration. The situation with respect to State and local government employment covered by social security is different than the situation with respect to private employment, and the procedures for reporting wages are governed by agreements between the States and the Secretary of Health, Education, and Welfare. A wide variety of patterns exists with respect to the types of State and local employment which are or are not covered under a multiplicity of agreements between the States and the Federal government and, in turn, between the States and local governmental entities. The existing reporting procedures, therefore, serve not only the requirements of the Social Security Administration but also the requirements of the State agencies which are responsible for coordinating the activities with respect to social security of the various governmental employers within each State. Accordingly, the Committee bill would not authorize the Secretary of Health, Education, and Welfare to modify the regulations and procedures with respect to the reporting of social security wages in the case of State and local employees except to the extent that modifications may be agreed upon between him and the States involved.

III. COST OF CARRYING OUT THE BILL

In compliance with section 252(a) of the Legislative Reorganization Act of 1970, the following statement is made relative to the costs to be incurred in carrying out the bill.

The committee estimates that this legislation would have virtually no impact on Federal expenditures. The provision authorizing certain coverage for West Virginia policemen and firemen could have a negligible impact on social security benefit payments. The provisions relating to the social security hearing process, according to estimates received from the Department of Health, Education, and Welfare, would not affect benefit costs but could reduce administrative expenses by \$16.3 million in fiscal years 1977 through 1981. The other provisions of the bill have no cost impact.

IV. VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with section 133 of the Legislative Reorganization Act of 1946, the following statement is made relative to the vote by the committee to report the bill. The bill was ordered reported by voice vote.

V. CHANGES IN EXISTING LAW MADE BY THE BILL. AS REPORTED

In compliance with subsection (4) of Rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted

is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE II—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE BENEFITS

FEDERAL OLD-AGE AND SURVIVORS INSURANCE TRUST FUND AND FEDERAL DISABILITY INSURANCE TRUST FUND

SEC. 201 (a) * * *

(g) (1) (A) [There are authorized to be made available for expenditure, out of any or all of the Trust Funds (which for purposes of this paragraph shall include also the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund established by title XVIII), such amounts as the Congress may deem appropriate to pay the costs of the part of the administration of this title, title XVI and title XVIII for which the Secretary of Health, Education, and Welfare is responsible. During each fiscal year or after the close of such fiscal year (or at both times), the Secretary of Health, Education, and Welfare shall analyze the costs of administration of this title, title XVI and title XVIII during the appropriate part or all of such fiscal year in order to determine the portion of such costs which should be borne by each of the Trust Funds and (with respect to title XVI) by the general revenues of the United States and shall certify to the Managing Trustee the amount, if any, which should be transferred among such Trust Funds in order to assure that (after appropriations made pursuant to section 1601, and repayment to the Trust Funds from amounts so appropriated) each of the Trust Funds and the general revenues of the United States bears its proper share of the costs incurred during such fiscal year for the part of the administration of this title, title XVI, and title XVIII for which the Secretary of Health, Education, and Welfare is responsible. The Managing Trustee is authorized and directed to transfer any such amount (determined under the preceding sentence) among such Trust Funds in accordance with any certification so made.]

[(B) The Managing Trustee is directed to pay from the Trust Funds into the Treasury the amounts estimated by him which will be expended, out of moneys appropriated from the general funds in the Treasury, during each calendar quarter by the Treasury Department for the part of the administration of this title and title XVIII for which the Treasury Department is responsible and for the administration of chapters 2 and 21 of the Internal Revenue Code of 1954. Such payments shall be covered into the Treasury as repayment to the account for reimbursement of expenses incurred in connection with such administration of this title and title XVIII and chapters 2 and 21 of the Internal Revenue Code of 1954.]

The Managing Trustee of the Trust Funds (which for purposes of this paragraph shall include also the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund established by title XVIII) is directed to pay from the Trust Funds into the Treasury—

(i) the amounts estimated by him and the Secretary of Health, Education, and Welfare which will be expended, out of moneys appropriated from the general fund in the Treasury, during a three-month period by the Department of Health, Education, and Welfare and the Treasury Department for the administration of titles II, XVI and XVIII of this Act and subchapter E of chapter 1 and subchapter A of chapter 9 of the Internal Revenue Code of 1939, and chapters 2 and 21 of the Internal Revenue Code of 1954, less.

(ii) the amounts estimated (pursuant to the method prescribed by the Board of Trustees under paragraph (4) of this subsection) by the Secretary of Health, Education, and Welfare which will be expended, out of moneys made available for expenditures from the Trust Funds, during such three-month period to cover the cost of carrying out the functions of the Department of Health, Education, and Welfare specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1954 other than those referred to in clause (i).

Such payments shall be carried into the Treasury as the net amount of repayments due the general fund account for reimbursement of expenses incurred in connection with the administration of titles II, XVI, and XVIII of this Act and subchapter E of chapter 1 and subchapter A of chapter 9 of the Internal Revenue Code of 1939, and chapters 2 and 21 of the Internal Revenue Code of 1954. A final accounting of such payments for any fiscal year shall be made at the earliest practicable date after the close thereof. There are hereby authorized to be made available for expenditure, out of any or all of the Trust Funds, such amounts as the Congress may deem appropriate to pay the costs of the part of the administration of this title, title XVI and title XVIII for which the Secretary of Health, Education, and Welfare is responsible and of carrying out the functions of the Department of Health, Education, and Welfare, specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1954 other than those referred to in clause (i) of the first sentence of this subparagraph.

(B) After the close of each fiscal year the Secretary of Health, Education, and Welfare shall determine the portion of the costs, incurred during such fiscal year, of administration of this title, title XVI, and title XVIII and of carrying out the functions of the Department of Health, Education, and Welfare, specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1954 (other than those referred to in clause (i) of the first sentence of subparagraph (A)), which should have been borne by the general fund in the Treasury and the portion of such costs which should have been borne by each of the Trust Funds; except that the determination of the amounts to be borne by the general fund in the Treasury with respect to expenditures incurred in carrying out such functions specified in section 232 shall be made pursuant to the method prescribed by the Board of Trustees under paragraph (4) of this subsection. After such determination has been made, the Secretary of Health, Education, and Welfare shall certify to the Managing Trustee the amounts, if any, which should be transferred from one to any of the other of such Trust

Funds, and the amounts, if any, which should be transferred between the Trust Funds (or one of the Trust Funds) and the general fund in the Treasury, in order to insure that each of the Trust Funds and the general fund in the Treasury have borne their proper share of the costs, incurred during such fiscal year, for the part of the administration of this title, title XVI, and title XVIII for which the Secretary of Health, Education, and Welfare is responsible and of carrying out the functions of the Department of Health, Education, and Welfare, specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1954 (other than those referred to in clause (i) of the first sentence of subparagraph (A)). The Managing Trustee is authorized and directed to transfer any such amounts in accordance with any certification so made."

(2) The Managing Trustee is directed to pay from time to time from the Trust Funds into the Treasury the amount estimated by him as taxes imposed under section 3101(a) which are subject to refund under section 6113(c) of the Internal Revenue Code of 1954 with respect to wages (as defined in section 1426 of the Internal Revenue Code of 1939 and section 3121 of the Internal Revenue Code of 1954) paid after December 31, 1950. Such taxes shall be determined on the basis of the records of wages established and maintained by the Secretary of Health, Education, and Welfare in accordance with the wages reported to the Commissioner of Internal Revenue pursuant to section 1420(c) of the Internal Revenue Code of 1939 and to the Secretary of the Treasury or his delegate pursuant to subtitle F of the Internal Revenue Code of 1954, and the Secretary shall furnish the Managing Trustee such information as may be required by the Trustee for such purpose. The payments by the Managing Trustee shall be covered into the Treasury as repayments to the account for refunding internal revenue collections. Payments pursuant to the first sentence of this paragraph shall be made from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund in the ratio in which amounts were appropriated to such Trust Funds under clause (3) of subsection (a) of this section and clause (1) of subsection (b) of this section.

(3) Repayments made under paragraph (1) or (2) shall not be available for expenditures but shall be carried to the surplus fund of the Treasury. If it subsequently appears that the estimates under either such paragraph in any particular period were too high or too low, appropriate adjustments shall be made by the Managing Trustee in future payments.

(4) *The Board of Trustees shall prescribe before January 1, 1981, the method of determining the costs which should be borne by the general fund in the Treasury of carrying out the functions of the Department of Health, Education, and Welfare, specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1954 (other than those referred to in clause (i) of the first sentence of paragraph (1)(A)). If at any time or times thereafter the Boards of Trustees of such Trust Funds deem such action advisable they may modify the method so determined.*

* * * * *

REDUCTION OF INSURANCE BENEFITS

MAXIMUM BENEFITS

SEC. 203. (a) * * *

* * * * *

(f) For purposes of subsection (b)—

(1) * * *

* * * * *

(8) (A) Whenever the Secretary pursuant to section 215(i) increases benefits effective with the month of June following a cost-of-living computation quarter he shall also determine and publish in the Federal Register on or before November 1 of the calendar year in which such quarter occurs a new exempt amount which shall be effective (unless such new exempt amount is prevented from becoming effective by subparagraph (C) of this paragraph) with respect to any individual's taxable year which ends after the calendar year in which such benefit increase is effective (or, in the case of an individual who dies during the calendar year after the calendar year in which the benefit increase is effective, with respect to such individual's taxable year which ends, upon his death, during such year).

(B) The exempt amount for each month of a particular taxable year shall be whichever of the following is the larger—

(i) the exempt amount which was in effect with respect to months in the taxable year in which the determination under subparagraph (A) was made, or

(ii) the product of the exempt amount described in clause (i) and the ratio of (I) the average of the [taxable] wages of all employees as reported to the Secretary of the Treasury for [the first calendar quarter of] the calendar year preceding the calendar year in which the determination under subparagraph (A) was made to (II) the average of the [taxable] wages of all employees as reported to the Secretary of the Treasury for the [first calendar quarter of 1973] calendar year 1973, or, if later, the [first calendar quarter of] calendar year preceding the most recent calendar year in which an increase in the contribution and benefit base was enacted or a determination resulting in such an increase was made under section 230(a), with such product, if not a multiple of \$10, being rounded to the next higher multiple of \$10 where such product is a multiple of \$5 but not of \$10 and to the nearest multiple of \$10 in any other case.

For purpose of this clause (i), the average of the wages for the calendar year 1977 (or any prior calendar year) shall, in the case of determinations made under subparagraph (A) prior to December 31, 1978, be deemed to be an amount equal to 400 per centum of the amount of the average of the taxable wages of all employees as reported to the Secretary for the first calendar quarter of such calendar year.

* * * * *

EVIDENCE, PROCEDURE, AND CERTIFICATION FOR PAYMENT

SEC. 205. (a) * * *

* * * * *

(b) The Secretary is directed to make findings of fact, and decisions as to the rights of any individual applying for a payment under this title. Upon request by any such individual or upon request by a wife, divorced wife, widow, surviving divorced wife, surviving divorced mother, husband, widower, child, or parent who makes a showing in writing that his or her rights may be prejudiced by any decision the Secretary has rendered, he shall give such applicant and such other individual reasonable notice and opportunity for a hearing with respect to such decision, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing, affirm, modify, or reverse his findings of fact and such decision. Any such request with respect to such decision must be filed within [such period after such decision as may be prescribed in regulations of the Secretary, except that the period so prescribed, may not be less than six months after notice of such decision is mailed to] *sixty days after notice of such decision is received* by the individual making such request. The Secretary is further authorized, on his own motion, to hold such hearings and to conduct such investigations and other proceedings as he may deem necessary or proper for the administration of this title. In the course of any hearing, investigation, or other proceeding, he may administer oaths and affirmations, examine witnesses, and receive evidence. Evidence may be received at any hearing before the Secretary even though inadmissible under rules of evidence applicable to the court procedure.

* * * * *

REDUCTION OF BENEFITS BASED ON DISABILITY ON ACCOUNT OF RECEIPT OF WORKMEN'S COMPENSATION

SEC. 224. (a) * * *

* * * * *

(f) (1) In the second calendar year after the year in which reduction under this section in the total of an individual's benefits under section 223 and any benefits under section 202 based on his wages and self-employment income was first required (in a continuous period of months), and in each third year thereafter, the Secretary shall redetermine the amount of such benefits which are still subject to reduction under this section; but such redetermination shall not result in any decrease in the total amount of benefits payable under this title on the basis of such individual's wages and self-employment income. Such redetermined benefit shall be determined as of, and shall become effective with, the January following the year in which such redetermination was made.

(2) In making the redetermination required by paragraph (1), the individual's average current earnings (as defined in subsection (a)) shall be deemed to be the product of his average current earnings as initially determined under subsection (a) and the ratio of (i) the average of the taxable wages of all persons for whom taxable wages

were reported to the Secretary for the first calendar quarter of the calendar year *before the calendar year* in which such redetermination is made, to (ii) the average of the taxable wages of such persons reported to the Secretary for the first calendar quarter of the taxable year *before the calendar year* in which the reduction was first computed (but not counting any reduction made in benefits for a previous period of disability). Any amount determined under the preceding sentence which is not a multiple of \$1 shall be reduced to the next lower multiple of \$1.

* * * * *

ADJUSTMENT OF THE CONTRIBUTION AND BENEFIT BASE

SEC. 230. (a) Whenever the Secretary pursuant to section 215(i) increases benefits effective with the June following a cost-of-living computation quarter, he shall also determine and publish in the Federal Register on or before November 1 of the calendar year in which such quarter occurs the contribution and benefit base determined under subsection (b) which shall be effective with respect to remuneration paid after the calendar year in which such quarter occurs and taxable years beginning after such year.

(b) The amount of such contribution and benefit base shall be the amount of the contribution and benefit base in effect in the year in which the determination is made or, if larger, the product of—

(1) the contribution and benefit base which was in effect with respect to remuneration paid in (and taxable years beginning in) the calendar year in which the determination under subsection (a) with respect to such particular calendar year was made, and

(2) the ratio of (A) the average of the [taxable] wages of all employees as reported to the Secretary of the Treasury for the [first calendar quarter of the] calendar year *preceding the calendar year* in which the determination under subsection (a) with respect to such particular calendar year was made to [the latest of] (B) the average of the [taxable] wages of all employees as reported to the Secretary of the Treasury [for the first calendar quarter of 1973 or the first calendar quarter of] *for the calendar year 1973 or, if later, the calendar year preceding the most recent calendar year in which an increase in the contribution and benefit base was enacted or a determination resulting in such an increase was made under subsection (a).*

with such product, if not a multiple of \$300, being rounded to the next higher multiple of \$300 where such product is a multiple of \$150 but not of \$300 and to the nearest multiple of \$300 in any other case.

For purposes of this subsection, the average of the wages for the calendar year 1977 (or any prior calendar year) shall in the case of determinations made under subsection (c) prior to December 31, 1978, be deemed to be an amount equal to 400 per centum of the amount of the average of the taxable wages of all employees as reported to the Secretary for the first calendar quarter of such calendar year.

* * * * *

PROCESSING OF TAX DATA

SEC. 232. The Secretary of the Treasury shall make available information returns filed pursuant to part III of subchapter A of chapter 61 of subtitle F of the Internal Revenue Code of 1954, to the Secretary for the purposes of this title and title XI. The Secretary and the Secretary of the Treasury are authorized to enter into an agreement for the processing by the Secretary of information contained in returns filed pursuant to part III of subchapter A of chapter 61 of subtitle F of the Internal Revenue Code of 1954. Notwithstanding the provisions of section 6103(a) of the Internal Revenue Code of 1954, the Secretary of the Treasury shall make available to the Secretary such documents as may be agreed upon as being necessary for purposes of such processing. The Secretary shall process any withholding tax statements or other documents made available to him by the Secretary of the Treasury pursuant to this section. Any agreement made pursuant to this section shall remain in full force and effect until modified or otherwise changed by mutual agreement of the Secretary and the Secretary of the Treasury.

* * * * *

TITLE XVI—SUPPLEMENTAL SECURITY INCOME FOR
THE AGED, BLIND, AND DISABLED

* * * * *

PART B—PROCEDURAL AND GENERAL PROVISIONS PAYMENTS AND
PROCEDURES

PAYMENT OF BENEFITS

SEC. 1631. (a) (1) * * *

* * * * *

Hearings and Review

(c) (1) The Secretary is directed to make findings of fact, and decisions as to the rights of any individual applying for payment under this title. The Secretary shall provide reasonable notice and opportunity for a hearing to any individual who is or claims to be an eligible individual or eligible spouse and is in disagreement with any determination under this title with respect to eligibility of such individual for benefits, or the amount of such individual's benefits, if such individual requests a hearing on the matter in disagreement within [thirty] sixty days after notice of such determination is received, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing, affirm, modify, or reverse his findings of fact and such decision. The Secretary is further authorized, on his own motion, to hold such hearings and to conduct such investigations and other proceedings as he may deem necessary or proper for the administration of this title. In the course of any hearing, investigation, or other proceeding, he may

administer oaths and affirmations, examine witnesses, and receive evidence. Evidence may be received at any hearing before the Secretary even though inadmissible under the rules of evidence applicable to court procedure.

(2) Determination on the basis of such hearing, except to the extent that the matter in disagreement involves [the existence of] a disability (within the meaning of section 1614(a)(3)), shall be made within ninety days after the individual requests the hearing as provided in paragraph (1).

(3) The final determination of the Secretary after a hearing under paragraph (1) shall be subject to judicial review as provided in section 205(g) to the same extent as the Secretary's final determinations under section 205 [; except that the determination of the Secretary after such hearing as to any fact shall be final and conclusive and not subject to review by any court].

Procedures; Prohibitions of Assignments; Representation of Claimants

(d)(1) The provisions of section 207 and subsections (a), (d), (e), and (f) of section 205 shall apply with respect to this part to the same extent as they apply in the case of title II.

[(2) To the extent the Secretary finds it will promote the achievement of the objectives of this title, qualified persons may be appointed to serve as hearing examiners in hearings under subsection (c) without meeting the specific standards prescribed for hearing examiners by or under subchapter II of chapter 5 of title 5, United States Code.]

[(3)](2) The Secretary may prescribe rules and regulations governing the recognition of agents or other persons, other than attorneys, as hereinafter provided, representing claimants before the Secretary under this title, and may require of such agents or other persons, before being recognized as representatives of claimants, that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their cases. An attorney in good standing who is admitted to practice before the highest court of the State, Territory, District, or insular possession of his residence or before the Supreme Court of the United States or the inferior Federal courts, shall be entitled to represent claimants before the Secretary. The Secretary may, after due notice and opportunity for hearing, suspend or prohibit from further practice before him any such person, agent, or attorney who refuses to comply with the Secretary's rules and regulations or who violates any provision of this paragraph for which a penalty is prescribed. The Secretary may, by rule and regulation, prescribe the maximum fees which may be charged for services performed in connection with any claim before the Secretary under this title, and any agreement in violation of such rules and regulations shall be void. Any person who shall, with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant or beneficiary under this title by word, circular, letter, or advertisement, or who shall knowingly charge

or collect directly or indirectly any fee in excess of the maximum fee, or make any agreement directly or indirectly to charge or collect any fee in excess of the maximum fee, prescribed by the Secretary, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall for each offense be punished by a fine not exceeding \$500 or by imprisonment not exceeding one year, or both.

* * * * *

INTERNAL REVENUE CODE OF 1954

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SUBTITLE F—PROCEDURE AND ADMINISTRATION

* * * * *

CHAPTER 61—INFORMATION AND RETURNS

* * * * *

SUBCHAPTER B—MISCELLANEOUS PROVISIONS

* * * * *

SEC. 6103. PUBLICITY OF RETURNS AND DISCLOSURE OF INFORMATION AS TO PERSONS FILING INCOME TAX RETURNS

(a) ***

* * * * *

(f) ***

(g) *DISCLOSURE OF INFORMATION TO SECRETARY OF HEALTH, EDUCATION, AND WELFARE.*—The Secretary or his delegate is authorized to make available to the Secretary of Health, Education, and Welfare information returns filed pursuant to part III of subchapter A of chapter 61 of subtitle F for the purpose of carrying out, in accordance with an agreement entered into pursuant to section 232 of the Social Security Act, an effective information return processing program.

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SOCIAL SECURITY HEARINGS AND APPEALS

NOVEMBER 20, 1975.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ULLMAN, from the Committee on Ways and Means,
submitted the following

REPORT

[To accompany H.R. 10727]

The Committee on Ways and Means, to whom was referred the bill (H.R. 10727) to amend the Social Security Act to expedite the holding of hearings under titles II, XVI, and XVIII by establishing uniform review procedures under such titles, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SCOPE

The purpose of H.R. 10727 is to expedite the holding of hearings for social security claimants whose applications for benefits have been denied. This is an emergency bill designed to take the most effective action that can be taken immediately to help reduce the enormous backlog of social security appeals cases now pending within the Social Security Administration. At the present time, there are approximately 105,000 cases before the Bureau of Hearings and Appeals of the Social Security Administration, including social security disability and retirement cases, Supplemental Security Income (SSI) cases, Medicare cases, and black lung cases.

The appeals procedures under the SSI program (title XVI of the Act) differ from those that apply to hearings conducted under the Old-Age, Survivors and Disability Insurance program (title II) and the Medicare program (title XVIII). In addition, SSI appeals are heard by social security hearing examiners whose appointment is provided for in title XVI of the Act, while social security and Medicare appeals are heard by Administrative Law Judges appointed under the Administrative Procedure Act.

H.R. 10727 would eliminate the distinctions between hearings under title XVI and those that are conducted under title II and title XVIII of the Act. The bill also provides for the more effective use of hearing officers within the Social Security Administration by giving the

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Exhibit C
White v. Mathews # 77-6015

authority to persons who have been appointed as SSI hearing examiners to hear cases under title II and title XVIII for a temporary period of time terminating December 31, 1978. They will, unlike current SSI hearing examiners, operate under the provisions of the Administrative Procedure Act which are designed to assure independence of hearings officers from agency control.

GENERAL DISCUSSION

Need for Legislation

There is currently a tremendous backlog of hearings cases before the Bureau of Hearings and Appeals and every Member of Congress has heard from constituents concerning cases where claimants have had to wait many months and even years for a hearing and decision in their case. Within recent months the Bureau of Hearings and Appeals has made significant gains in increasing the productivity of Administrative Law Judges (ALJs) with the result that the current case backlog is being reduced by 1,000 cases a month. If the authority in this bill is enacted it has been estimated that the hearing backlog will be reduced by 3,000 a month so that in 18 months cases can be adjudicated within 90 days.

At the request of 73 Members of Congress, the Subcommittee on Social Security held extensive hearings on this subject in September and October and heard from 43 witnesses including some of the foremost experts in administrative law and social security. The Subcommittee also heard from the various associations of hearing examiners and Administrative Law Judges. Many suggestions were made for changes in the hearings procedures and the administration of the disability programs ranging from minor amendments to massive structural changes.

In this regard, the Committee recommends that the Social Security Administration authorize the Center for Administrative Justice to make a study of the Social Security appeals procedures and make recommendations for any structural changes relating to improving both the speed and quality of Social Security adjudications. Although most witnesses appearing before the Subcommittee agreed that the current appeals system under the Administrative Procedure Act is in the public interest, some witnesses, including the Civil Service Commission, expressed a contrary view. Thus, the recommended study should address this broad issue together with such subjects as the appropriate qualifications, method of appointment, and position and grade classification of Social Security ALJs.

Although it intends to consider the appeals process in depth when it takes up comprehensive Social Security legislation next session, the Committee now recommends a relatively limited bill which could be enacted into law this year. Additional amendments might have the effect of complicating and making the bill more subject to controversy.

Provisions of the Bill

The bill eliminates the distinction in the nature of hearings and hearing officers under the Social Security and SSI programs, thus resulting in a common corps of hearing officers authorized to conduct hearings under both programs with common procedural safeguards

provided under the Social Security Act and the Administrative Procedure Act.

The first provision of the bill would amend Section 1631(c) of the Social Security Act to provide the same rights to hearing and administrative and judicial review with respect to claims under title XVI (SSI) of the Act as to apply to title II (Social Security) and title XVIII (Medicare) claims under Section 205(b) and 205(g) of the Act. This is necessary to override an interpretation of the Civil Service Commission that the Administrative Procedure Act was not applicable to SSI hearings and which required the appointment of SSI hearing officers who could not hear Social Security and Medicare cases. This action greatly exacerbated the current hearing crisis and the validity of the SSI hearings has been challenged in the Courts as second class justice. The Committee bill will put this matter to rest by clearly providing on-the-record administrative hearings and judicial review of a parallel nature for Social Security, SSI and Medicare claimants.

The principal modifications to Section 1631(c), which presently provides general authority to the Secretary to conduct hearings on SSI appeals, would be:

- (1) the specific requirement that decisions after a hearing must be on the basis of evidence adduced at the hearing;
- (2) an increase in the period during which requests for review must be filed from 30 days to 60 days;
- (3) the addition of specific authority for the Secretary to hold hearings and make findings of fact, administer oaths, examine witnesses and receive evidence; and authority to receive evidence at a hearing even though inadmissible under the rules of evidence applicable to court procedure;
- (4) to make the final determinations of the Secretary subject to the "substantial evidence rule" upon judicial review by eliminating language presently in Section 1631(c) (3) which provides that the determinations of the Secretary "as to any fact shall be final and conclusive and not subject to review by any court".

The principal effect of this last modification is to apply the same rules of judicial review of title XVI cases as apply to title II cases. By removing this language from title XVI, findings of fact of the Secretary in SSI cases, if supported by substantial evidence, shall be conclusive as are such findings under title II. Your Committee believes that both programs should be under the "substantial evidence rule", but that this should not be interpreted by the courts as a license to vary from strict adherence to its principles. With over 4,000 social security disability cases now pending in the United States District Courts, and the possibility of a similar caseload developing in the SSI program, when its appeals are fully felt, the practice of certain courts to make *de novo* factual determinations would result in very serious problems for the federal judiciary and the social security program.

Your Committee bill would repeal section 1631(d) (2) of the Social Security Act. This is the section of the law under which, pursuant to Civil Service Commission interpretation, non-APA hearing examiners have been appointed. The continuation of this authority is inappropriate inasmuch as title XVI cases in the future will require APA hear-

ing officers. The Committee believes that an adequate supply of APA hearing officers can be obtained from the current pool of SSI hearing examiners and Black Lung ALJs who meet or will meet the requirements for regular appointments and through the on-going recruitment by the Civil Service Commission of ALJs in the private and governmental sectors.

The Committee bill also grants authority for those SSI hearing examiners (who have been appointed under section 1631(d)(2)) to hear cases under titles II, XVI, and XVIII until December 31, 1978 as temporary Administrative Law Judges if the Secretary of HEW finds it will promote the achievement of the objectives of these titles. It is the Committee's understanding that the Secretary will make this finding as to all SSI hearing examiners who have been appointed. The Committee also understands that now virtually all the temporary Black Lung judges hold SSI hearing examiner appointments and this would provide the Bureau of Hearings and Appeals the 200 judges it needs to reduce the backlog. Furthermore, by the end of 1978, all SSI examiners will have acquired sufficient adjudication experience to meet the experience requirement for appointment as regular ALJs. They would, as they met the experience requirement, be afforded the opportunity to be placed on the register for regular ALJ appointment on a merit basis under the regular Civil Service procedures.

It is hoped that these requirements and procedures will be applied in a manner to effectively serve the needs of the Social Security Act programs. The Committee is not convinced that these needs have been adequately served in the past by the Office of Administrative Law Judges, Civil Service Commission. The performance of this office in overruling the administering agency (HEW) in its legal opinion that SSI was under the APA and in downgrading title II social security adjudications as bearing "little resemblance to the full-blown adversarial proceedings conducted by Administrative Law Judges, under the Administrative Procedure Act, in regulatory agencies" does not reflect the will of Congress.

The Office of Administrative Law Judges should be mindful of its ministerial responsibilities in supplying registers from which adequate numbers of ALJs can be hired by HEW to adjudicate social security claims. There are indications that in the past these registers have not been supplied with the speed and with the number of candidates thereon which HEW needed to get better control over the hearings backlog. In evaluating current SSI hearings examiners for regular ALJ appointments great weight should be given to experience in actually adjudicating Social Security and Black Lung cases and roadblocks should not be created in unduly lengthy and bureaucratic appointment procedures. Recent statistics show that of the 53 applications of SSI hearing examiners for the regular ALJ registers which have been acted upon by the Civil Service Commission, only 5 hearing examiners have been found eligible. This suggests to the Committee that the Office of Administrative Law Judges is applying its standards unrealistically. Now that a majority of the ALJ corps in the Federal Government are working under Social Security Act programs, the Civil Service Commission should reexamine its ALJ appointment standards to assure that they are relevant to the positions that have to be filled.

To avoid any possible misinterpretation, the bill specifically provides that the temporary hearing officers authorized to conduct hearings under the bill would be subject to all the provisions of the Administrative Procedure Act that assure independence from agency control. These provisions would include: Subchapter II of chapter 5 of title 5 of the United States Code (the substantive provisions relating to APA adjudications); the second sentence of section 3105, of title 5 U.S.C. (assignment of cases in rotation and the prohibition of assignment to duties inconsistent with their responsibilities as hearing officers); and the deeming of them as hearing examiners appointed under section 3105 so that, among other things, they would be exempt from agency performance rating requirements (5 U.S.C. 4301(2)(E)) and agency determination of performance acceptability for in-grade increases (5 U.S.C. 5335(a)(3)(B)) and making Civil Service responsible for determining their pay levels (5 U.S.C. 5362), removal for cause (5 U.S.C. 7521), and general administration (5 U.S.C. 1305). The Committee is unaware of any prejudicial "agency control" exercised by HEW under the parallel provisions it has established for SSI hearing examiners. However, the specific application of these provisions of the APA, together with the provisions of the bill applying the same procedural safeguards to review proceedings under title XVI as apply under title II, will eliminate the possibility of the courts determining that SSI review procedures do not comply with the Administrative Procedure Act or due process.

Moreover, the specific enumeration of these provisions of the APA as applicable to the temporary ALJs should not be interpreted to make these adversary proceedings or otherwise "judicialize" procedures under title II, XVI, and XVIII. The enumeration of these provisions also should in no way suggest that they are not applicable to the regular Social Security ALJs. Your Committee and the Department of HEW consistently over the years have declared that the language in title II (and under the provisions of this bill, title XVI) of the Social Security Act call for "on-the-record" hearings which invoke the provisions of the Administrative Procedure Act.

Although the bill is silent on the grade level of temporary ALJs, the Administration's proposal made at the hearing before the Subcommittee envisioned a GS-14 for such officers who would have been allowed to hear concurrent cases (applications for SSI and Social Security) in addition to those solely for SSI benefits. Your Committee's bill authorizes broader authority for these temporary ALJs so that the Bureau of Hearings and Appeals will have the maximum amount of flexibility in eliminating the appeals backlog. These temporary ALJs, therefore, would also be able to hear Social Security and Medicare cases. For these reasons and also because the Black Lung ALJs who will be included in the temporary corps have already been classified at the GS-14 level, the Committee believes that GS-14 would be an appropriate classification for those holding authority provided for by the bill. The fact that the Committee does not suggest or mandate by law a GS-15 for these individuals does not indicate that it believes that a lower grade is appropriate for regular Social Security ALJs. In fact, the Committee was not impressed with the rationale of the Civil Service Commission which emphasized the non-adversary aspect of the Social Security hearing in justifying the dif-

ferential in grade level between regulatory agency ALJs (GS-16) and the Social Security ALJs (GS-15).

The final provision in the bill will reduce the period for which Social Security and Medicare appeals may be taken at both the reconsideration and hearing level from six months to 60 days.

The Committee believes that a 6-month time period is unnecessarily long for a claimant to appeal a title II or title XVIII decision of his claim. In fact, because a mandatory reconsideration has been adopted administratively under this authority, a double period may result. An individual whose claim has been initially denied has a full six months to decide whether to request a reconsideration and then another 6 months to decide whether to appeal to an Administrative Law Judge.

More than 65 percent of the hearings requested are filed within 60 days after the claimants receive notification that their reconsideration had not resulted in the decision being overturned. If the time limit was reduced to 60 days, there may be a decrease in the number of hearing requests filed. Those individuals who have not filed for review within 60 days may file a new application for benefits on the basis of new evidence or changed condition which in most instances can be adjudicated more speedily at the initial determination level. Also, reducing the time limit would result in a reduction in administrative costs and, perhaps most importantly would be beneficial in that less case development would be needed at the hearing level. This situation has played a major role in delaying decisions in appealed cases. Often hearings filed in the 4th, 5th, or 6th months following the reconsideration determination are virtually new cases and call for extensive medical and vocational development which takes the ALJ away from his primary role of deciding cases. In order to assure that the rights of individuals are not adversely affected, your Committee has instructed the Social Security Administration to undertake an extensive public information program which will advise social security applicants of the shortened length of time for filing an appeal.

Extending the time limit for requesting SSI hearings would make the limit generally consistent with the time limit applicable to Social Security, Black Lung, and most Medicare claims and would be beneficial from a procedural and administrative standpoint particularly in concurrent benefit cases. The Social Security Administration informed the Committee that currently it is granting many waivers for late filing of SSI appeals, and extending the present 30 day period will give more reality to present procedures.

OTHER MATTERS REQUIRED TO BE DISCUSSED UNDER HOUSE RULES

In compliance with clause 2(1)(2)(B) of rule XI of the Rules of the House of Representatives, the following statement is made relative to the vote by your committee on the motion to report the bill. The bill was ordered reported by a unanimous voice vote.

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the following statement is made relative to oversight findings by your committee. As a result of hearings conducted in September and October of this year by the Subcommittee on Social Security your committee concluded that it would be desirable to enact legislation to expedite the holding of hearings for social security claimants as is provided in H.R. 10727.

In compliance with clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives your committee states that this bill will involve no new budgetary authority or new or increased tax expenditures.

With respect to clause 2(1)(3)(C) and clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives your committee advises that no estimate or comparison has been submitted to your committee by the Director of the Congressional Budget Office relative to H.R. 10727, nor have any oversight findings or recommendations been submitted to your committee by the Committee on Government Operations with respect to the subject matter contained in the bill.

In compliance with clause 2(1)(4) of rule XI of the Rules of the House of Representatives your committee states that this bill would not have any inflationary impact on prices and costs in the operation of the national economy.

In compliance with clause 7 of rule XIII of the Rules of the House of Representatives, the following statement is made relative to the cost of the bill: Your Committee estimates that there will be no additional program costs and possibly a slight savings in administrative costs this fiscal year and each of the following five fiscal years, as a result of the enactment of this legislation. The Department of HEW agrees with the Committee's estimate.

SECTION-BY-SECTION ANALYSIS OF H.R. 10727

Section 1 of the bill would revise Section 1631(c) of the Social Security Act to provide to an applicant for benefits under title XVI of that Act the same rights to administrative and judicial review that Section 205(b) of that Act provides with respect to claims for benefits under titles II and XVIII of the Social Security Act.

The principal modifications to Section 1631(c)—which provides general authority to the Secretary of Health, Education, and Welfare to conduct hearings—would be:

(1) to include a specific requirement that decisions after a hearing must be on the basis of evidence adduced at the hearing;

(2) to make the final determination of the Secretary subject to the substantial evidence rule upon judicial review; the provision in current law (Sec. 1631(c)(3)) which provides that the determinations of the Secretary "as to any fact shall be final and conclusive and not subject to review by any court" would be repealed;

(3) to increase the period during which requests for review may be filed from 30 days to 60 days;

(4) to provide specific authority for the Secretary to hold hearings and make findings of fact, administer oaths, examine witnesses and receive evidence; and

(5) to authorize the Secretary to receive evidence at a hearing even though inadmissible under the rules of evidence applicable to court procedure.

Section 2 would repeal Section 1631(d)(2), thus terminating the authority of the Secretary of Health, Education, and Welfare to appoint individuals as hearing examiners to conduct hearings under title XVI.

Section 3 would authorize individuals who were appointed under Section 1631(d)(2) of the Social Security Act prior to enactment of the bill to conduct hearings under titles II (Social Security), XVI (SSI) and XVIII (Medicare) of the Social Security Act when the Secretary of Health, Education, and Welfare finds that it will promote the achievement of the objectives of those titles and notwithstanding the fact that these individuals were not appointed as Administrative Law Judges under the Administrative Procedure Act (5 U.S.C. section 3105). The appointments made prior to enactment under Section 1631(d)(2) may be continued until December 31, 1978. Until such date these individuals shall be deemed hearing examiners (ALJs) appointed under such section 3105 of title V and subject to subchapter II of Chapter 5 of such title, to the second sentence of such section 3105, and to all of the other provisions of such title 5 which apply to hearing examiners appointed under such section 3105.

Section 4 would amend Section 205(b) of the Social Security Act to specify that a request for a hearing under title II may not be filed later than sixty days after an individual receives notice of an adverse decision with respect to his rights to benefits. Under existing law, such requests may be filed within such time period as the Secretary specifies by regulation but the period cannot be less than six months after notice is mailed.

Section 5 would provide that the provisions of the bill take effect on enactment, except that the provisions which would reduce the period in which a request for a hearing may be filed would be effective only with respect to an adverse decision notice of which is received on or after the date of enactment.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SOCIAL SECURITY ACT

TITLE II—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE BENEFITS

EVIDENCE, PROCEDURE, AND CERTIFICATION FOR PAYMENT

SEC. 205. (a) * * *

(b) The Secretary is directed to make findings of fact, and decisions as to the rights of any individual applying for a payment under this title. Upon request by any such individual or upon request by a wife, divorced wife, widow, surviving divorced wife, surviving divorced mother, husband, widower, child, or parent who makes a showing in writing that his or her rights may be prejudiced by any decision the

Secretary has rendered, he shall give such applicant and such other individual reasonable notice and opportunity for a hearing with respect to such decision, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing, affirm, modify, or reverse his findings of fact and such decision. Any such request with respect to such decision must be filed within [such period after such decision as may be prescribed in regulations of the Secretary, except that the period so prescribed may not be less than six months after notice of such decision is mailed to] *sixty days after notice of such decision is received by the individual making such request.* The Secretary is further authorized, on his own motion, to hold such hearings and to conduct such investigations and other proceedings as he may deem necessary or proper for the administration of this title. In the course of any hearing, investigation, or other proceeding, he may administer oaths and affirmations, examine witnesses, and receive evidence. Evidence may be received at any hearing before the Secretary even though inadmissible under rules of evidence applicable to court procedure.

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TITLE XVI—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

* * * * *

PART B—PROCEDURAL AND GENERAL PROVISIONS PAYMENTS AND PROCEDURES

PAYMENT OF BENEFITS

SEC. 1631. (a) (1) * * *

* * * * *

Hearings and Review

(c) (1) *The Secretary is directed to make findings of fact, and decisions as to the rights of any individual applying for payment under this title. The Secretary shall provide reasonable notice and opportunity for a hearing to any individual who is or claims to be an eligible individual or eligible spouse and is in disagreement with any determination under this title with respect to eligibility of such individual for benefits, or the amount of such individual's benefits, if such individual requests a hearing on the matter in disagreement within [thirty] sixty days after notice of such determination is received, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing, affirm, modify, or reverse his findings of fact and such decision. The Secretary is further authorized, on his own motion, to hold such hearings and to conduct such investigations and other proceedings as he may deem necessary or proper for the administration of this title. In the course of any hearing, investigation, or other proceeding, he may administer oaths and affirmations, examine witnesses, and receive evidence. Evidence may be received at any hearing before the Secretary even though inadmissible under the rules of evidence applicable to court procedure.*

(2) Determination on the basis of such hearing, except to the extent that the matter in disagreement involves [the existence of] a disability

(within the meaning of section 1614(a)(3)), shall be made within ninety days after the individual requests the hearing as provided in paragraph (1).

(3) The final determination of the Secretary after a hearing under paragraph (1) shall be subject to judicial review as provided in section 205(g) to the same extent as the Secretary's final determinations under section 205; except that the determination of the Secretary after such hearing as to any fact shall be final and conclusive and not subject to review by any court.

Procedures; Prohibitions of Assignments; Representation of Claimants

(d) (1) The provisions of section 207 and subsections (a), (d), (e), and (f) of section 205 shall apply with respect to this part to the same extent as they apply in the case of title II.

[(2) To the extent the Secretary finds it will promote the achievement of the objectives of this title, qualified persons may be appointed to serve as hearing examiners in hearings under subsection (c) without meeting the specific standards prescribed for hearing examiners by or under subchapter II of chapter 5 of title 5, United States Code.]

[(3)] (2) The Secretary may prescribe rules and regulations governing the recognition of agents or other persons, other than attorneys, as hereinafter provided, representing claimants before the Secretary under this title, and may require of such agents or other persons, before being recognized as representatives of claimants, that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their cases. An attorney in good standing who is admitted to practice before the highest court of the State, Territory, District, or insular possession of his residence or before the Supreme Court of the United States or the inferior Federal courts, shall be entitled to represent claimants before the Secretary. The Secretary may, after due notice and opportunity for hearing, suspend or prohibit from further practice before him any such person, agent, or attorney who refuses to comply with the Secretary's rules and regulations or who violates any provision of this paragraph for which a penalty is prescribed. The Secretary may, by rule and regulation, prescribe the maximum fees which may be charged for services performed in connection with any claim before the Secretary under this title, and any agreement in violation of such rules and regulations shall be void. Any person who shall, with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant or beneficiary under this title by word, circular, letter, or advertisement, or who shall knowingly charge or collect directly or indirectly any fee in excess of the maximum fee, or make any agreement directly or indirectly to charge or collect any fee in excess of the maximum fee, prescribed by the Secretary, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall for each offense be punished by a fine not exceeding \$500 or by imprisonment not exceeding one year, or both.

* * * * *

94th Congress }
1st Session }

COMMITTEE PRINT

SUBCOMMITTEE ON SOCIAL SECURITY
OF THE
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

Appeals Process: Areas of Possible
Administrative or Legislative Action

PREPARED BY THE STAFF OF THE
SUBCOMMITTEE ON SOCIAL SECURITY



NOVEMBER 3, 1975

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Exhibit D
White v. Mathews # 77-6015

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APPEALS PROCESS: AREAS OF POSSIBLE ADMINISTRATIVE OR LEGISLATIVE ACTION

Summary

The staff believes that the most effective means of dealing immediately with the appeals crisis is to report out emergency legislation similar to that in section 3 of H.R. 8911 which has already been approved by the Public Assistance Subcommittee.

The statement of the administration that it will make fairly substantial inroads into the hearings backlog is based on the assumption that SSI and black lung hearing officers will be available to hear SSI and social security concurrent cases. On the other hand, H.R. 8911 will go further in eliminating the backlog by giving even greater authority to this group so that they can also hear social security and medicare cases. Moreover, clarifying amendments recommended by staff will make hearings conducted under the temporary authority less vulnerable to legal attack.¹

The administration has proposed an alternative to H.R. 8911 and the staff presents a critique of this proposal on pages 9-10. The staff's suggestions for technical and clarifying amendments to H.R. 8911 are presented on pages 10-12.

A number of bills and suggestions have been presented to the Subcommittee. They may have great merit, but the staff believes that it would be premature to act on them until the results of some rather significant studies, demonstration projects, and court cases² have been received, and the disability insurance program can be examined by the subcommittee in a comprehensive manner which we suggest be undertaken early next session. Moreover, other amendments might have the effect of complicating and making more controversial legislation which might otherwise be enacted in a short period of time. The appeals crisis is almost wholly the creature of the social security and SSI disability programs and although mandating by statute certain processing time limits might seem on the surface a desirable thing to do, such legislation might also have an adverse effect on the quality

¹ A class action has just been filed last month in a U.S. district court in New Jersey to enjoin the Secretary of HEW from using SSI hearing examiners, contending that the claimant is being denied due process in having his case heard before an individual who is "directly controlled" by the Secretary.

² The GAO is currently conducting two studies of substantial interest: (1) an examination of the State agency operation with emphasis on the variations among the States in how they adjudicate cases; (2) an evaluation of efficacy of the vocational rehabilitation program for disabled beneficiaries which is financed out of the disability trust fund. The Social Security Administration is conducting a new study of the feasibility of conducting face-to-face contact at the reconsideration level. The case of *Mathews v. Eldridge* has been argued before the Supreme Court and a decision is now pending as to whether a "due process" type hearing must be given before disability benefits may be terminated. The Social Security Administration has instituted a contingency study to see how the State agency might carry out such hearings if the Government loses the *Eldridge* case. The so-called "informal remand" experiment has just been instituted by the Social Security Administration and its early results are too fragmentary to draw any conclusions.

and uniformity of disability adjudication which is already somewhat suspect. At present, the disability insurance system has a serious short-term and long-term actuarial deficit which was unanticipated and largely unexplained. Recent statistics indicate that this situation may be getting worse. The number of benefit awards for the period September 1974 to September 1975 was 20 percent higher than those for the 12 months preceding this period.

It should be noted that the Secretary has broad regulatory authority over the hearings and appeals process (see sec. 205 (a)) and a number of the major constituent parts of the process, such as mandatory reconsideration and appeals council review, are based on this general rulemaking power rather than specific legislative provision. In general this is desirable in preventing rigidity in the process when experience indicates that change is necessary and constant statutory modifications are not practicable. In the pages which follow areas of possible improvement by change in the regulations are also discussed by level of adjudication: initial, reconsideration, hearings, and appeals council.

Background

The social security appeals process has been relatively complex since its inception with agency, independent hearing officer, and court review of substantive decisions affecting beneficiaries. In the early years of the program, old-age and survivors appeals, although often presenting difficult problems in adjudication, were low in volume. In 1948, for instance, about 855,000 claims for benefits were filed but there were only 5,114 requests for reconsideration and 1,500 requests for hearings. The growth of the Social Security Act programs, primarily the establishment of the disability insurance program and disability under SSI, has changed all of this. In fiscal 1975, there were 4,665,000 claims filed, 456,000 requests for reconsideration and 123,825 requests for hearings.³ The disability programs—80 to 90 percent of appealed cases are in the disability area—have not only added to the appeals volume but they have increased administrative complexity since they resulted in new governmental entities being added to the system. These are the State agencies which make the initial determination of disability and the reconsideration decision if a reconsideration is requested. (As to old-age and survivors benefits, there is appeals adjudication solely by Federal employees.)

Commissioner Cardwell has pointed out the problems of a highly individualized hearing under the Administrative Procedure Act, in a high volume program. He stated in a recent hearing:

* * * the nature of the hearings process limits our capability to deal with pending workloads. The present system, with the need to establish an evidentiary record which must be able to withstand judicial scrutiny is a time-consuming and expensive process under the best conditions. Each hearing must be handled individually as a strictly human endeavor. An automated, electronic, or other mass production system is not possible although support systems are possible. Thus, the time and staff expended is grossly disproportionate to the volume involved.

³ These statistics do not include Medicare appeals.

Workload, Staffing, and Processing Time Goals

The current backlog in the Bureau of Hearings and Appeals is 107,000 requests for hearings. There are currently 445 ALJ's (who can hear title II, title XVI and title XVIII cases), 125 SSI hearing examiners (who can hear only title XVI cases), and 95 temporary black lung ALJ's (who can hear only black lung but when these hearings run out early next year, they will assume SSI hearing examiner appointments). It is the hope of the BHA to hire 55 more ALJ's in the next 3 months. However, it is estimated that 105 ALJ's will retire within the next 3 years.

Mr. Trachtenberg, Director of the Bureau of Hearings and Appeals, states that the aim of BHA is to bring productivity of hearing officers up to 26 cases a month. In January 1975 productivity was around 14 cases per month but now it has increased to 21 per month.

The following table shows ALJ production figures for the first half of fiscal year 1975 compared with those for the second half.

Average cases per month	1st half fiscal year 1975		2d half fiscal year 1975		Change
	Number of ALJ's	Percent ALJ's	Number of ALJ's	Percent ALJ's	
Under 10.....	51	13	20	5	Down 8 percent.
10 to 15.....	162	42	73	19	Down 23 percent.
16 to 20.....	122	32	139	36	Up 4 percent.
Over 20.....	49	13	152	40	Up 27 percent.
Total.....	384		384		

Commissioner Cardwell states that assuming the Secretary is given temporary authority to utilize SSI hearing examiners more effectively, the hearing backlog will be reduced to about 75,000 at this time next year and eliminated in the sense that processing time generally would be on a 90-day basis by July 1977.

The pending hearing caseload by category was as follows on July 1, 1975:

Disability Insurance.....	51,121
Retirement and survivors.....	1,580
Health Insurance.....	798
Social security and SSI (concurrent).....	10,314
SSI only.....	17,011
Black lung.....	24,315
Total.....	111,169

The estimated hearing case receipts in fiscal 1976 are estimated as follows:

Disability Insurance.....	70,300
Retirement and survivors.....	3,100
Health Insurance.....	2,000
Social security and SSI (concurrent).....	22,200
SSI only.....	20,300
Black lung.....	1,000
Total.....	124,900

The overall staffing of the Bureau of Hearing and Appeals for fiscal 1976 is as follows:

Hearing offices:	
Hearing officers ¹	675
Staff attorneys	325
Support staff	1,600
Development center	220
Appeals operations ²	1,200
Staff activities: ³	
Regional office	165
Central office	275
Total	4,450

¹ Includes the 200 judges referred to in Commissioner Cardwell's testimony; some of whom would be former temporary black lung administrative law judges and SS hearing examiners.

² Represents central office activities in direct support of appeals function.

³ Represents central and regional office activities which indirectly support the hearings and appeals function.

Basic Restructuring of the System

Although it appears that, on the surface, the appeals system is one that is screaming for structural change, few such proposals have been advanced and those that have been do not seem to have significant support for immediate legislative action. Professor Robert Dixon of Washington University and John Rhineland, Under Secretary of HUD, former General Counsel of HEW, stated in their testimony that the subjective nature of disability, the lack of standards and the inability to apply them uniformly throughout the various levels of review raises the question of whether the disability provisions should be terminated and replaced by some "guaranteed income" or "negative income" tax system. These suggestions, however, do not appear to hold out any hope for dealing with immediate problems. It is unrealistic to expect that an income guarantee program would be established which would not make some distinction between individuals who are able to work and those who are not. At best, one could only hope for a more exact test to apply than the "substantial gainful activity" test in the present law.

Other commentators who testified before the subcommittee have suggested federalization of the State agency operation as a major step in simplification and expediting claims and appeals processing. Former Commissioner of the Social Security Administration Robert M. Ball stated at our recent hearings:

I believe the total disability process would be improved if the State disability units were to be made a part of the Federal Social Security Administration.

Having the whole process of initial adjudication and reconsideration under a single direct line operation would help make for more uniform and consistent determinations in the borderline area at the first stages of adjudication. And the staffing pattern could be more flexible since it wouldn't be necessary to staff according to State lines under a Federal determination system.

One illustration of that: It would be easier to staff for face-to-face discussions at the reconsideration level, which the Social Security Agency is now considering. But since most State dis-

ability determination agencies are located at just one central point it is very difficult to work out a face-to-face discussion as long as you have the State system.

The current Commissioner, James B. Cardwell, however, testified in a slightly different vein at a hearing earlier in the year.

Mr. STIGER. May I go to another question on the disability program? The law is structured, as you know, and you referred to it specifically on page 9 of your statement with the State rehabilitation agency, which operates under a contract with your office. Is that system working well? Are you satisfied with that process, through which these claims now go?

Mr. CARDWELL. That is a question that has been asked so many times by groups and interests outside of the agency. It has been asked steadily by the agency. As of this moment, we in the agency feel that it is working as well as it could work, and we wish that our part of the process, frankly, were in as good a shape as we think their process to be generally. The State agencies have steadily improved their performance. They seem to be carrying out their work fairly efficiently, all things considered. All things considered, the first question that must continue to puzzle us and which we must, I think, continue to look at is the basic difficulty of having to have a second party to carry out part of the process at an arm's length, for fear that the first party might not be as objective or something, whatever leads to that original conclusion.

I think that it is undeniable that the business of trafficking in paper back and forth has to prolong the basic process. I don't see how it could be any other way although not everybody agrees with me on that. I start out with that general feeling.

Our examination of their performance tells us that our problems in the last year or 1½ years in disability [have] not centered there. The problems lie in our own internal procedures, the matter of making payments once the claim had been adjudicated, interrupted payments and that sort of thing.

Most of the horrible examples that you probably experienced, really center on those latter processes more often than not, rather than on the former process of the State agencies' delay.

Other alternatives involving major structural changes have been presented such as Mr. Herbert Brown's, Tennessee Disability Determination Agency, testimony suggesting the possibility of using the VA approach of a three-man rating board consisting of a legal, medical and lay member. Mr. Edwin Yourman in his report on the social security appeals process, however, writes that:

It is arguable that three heads are better than one, particularly when it makes both medical and legal disciplines available in claims adjudication, but it can hardly be contended that the use of a board system would expedite adjudication or provide better manpower utilization at a crisis period of peak workloads which are continually increasing.

Mr. Yourman, incidentally, concludes that the social security appeals process is "basically sound" but could be improved. Some of his recommendations will be discussed in the next section.

Improvements in Existing System

Possible improvements and recommended action will be discussed by level of adjudication and in terms of whether they can be accomplished legislatively or administratively.

Initial Determination

Although the initial determination is not per se a part of the appeals process, the quality of claims processing and determinations made at that level play a major role in how many appeals are undertaken and the speed with which they are disposed of. The ALJ's state that lack of the development of the case at the district office and State agency levels results in the loss of valuable time and energy in the hearing process where the big backlog exists. The ALJ's suggest that authority be granted to remand cases back to the State agency. Most of the State agency administrators who testified were not encouraged by the results of the "informal" remand which has been instituted and the statistics received so far suggest that there may be reason to question its ultimate success. The State agencies, on the other hand, note a decline in the quality of the district office interview of the claimant. The staff note two recent developments which impose rather short time limits on case development in the district office which may, in theory, speed up processing time but conceivably at the expense of delay for further development farther down the processing trail.

District office.—The committee should direct the Department of HEW to take certain steps to improve performance at this level. Specific directions could be included in the committee report on the legislation reported. Greater effort should be made in preparing disability cases at the district office so that subsequent development is not necessary at the initial determination, reconsideration, and hearing levels. Specialization should be encouraged and training greatly accelerated in disability claims development. Impediments to these developments appear to exist both in the Department of HEW and the Civil Service Commission. The 6,000 term positions authorized for district office staff should be converted to permanent positions. Language to this effect is contained in the Senate report on the HEW Appropriations Act. (S. Rept. 94-366, p. 84.)

State agency.—In addition to federalization, alternative ways could be explored of devising means of enforcing Federal standards as to productivity and quality of adjudication. The more dynamic use of standard-enforcing through the Federal contract should be explored and the results and recommendations of the current GAO study of the State agencies should be evaluated. However, even the tentative conclusions of the GAO will not be available until January 1976, at the earliest. If legislation to ameliorate the appeals crisis is to remain relatively noncontroversial and susceptible to enactment in a relatively short time, such issues as federalization and other major structural changes should probably be excluded. Similarly, such legislation as Mr. Seiberling's (H.R. 5276) which imposes a 90-day limit on initial determinations seem premature until the Federal Government can be assured that such limits will not be obtained in some States at the expense of quality adjudication. At the present time, it would appear such assurances do not exist. The overall problem of processing-time

limits will be discussed in more detail in the following section on reconsideration.

Reconsideration

The Sisk bill (H.R. 8018) and others—some 60 Members are sponsors of identical bills—has received substantial support. On the other hand, this legislation is not a complete answer to the current backlog crisis. Moreover, the Sisk bill is applicable only to title II social security. Section 3 of H.R. 8911 puts SSI appeals under the same procedures used for social security claims. The disability programs are intertwined to such a degree that the idea of identical provisions is quite compelling.

The Sisk bill provides:

(1) a spelling out in the statute of the requirement in the regulations that an individual must go through reconsideration before he is entitled to a hearing, and

(2) a spelling out of current administrative practice to notify the claimant in writing of the denial of benefits on the reconsideration. It goes beyond present practice in requiring that the claimant be provided with:

(a) a summary of evidence pertinent to the issues,

(b) a citation and discussion of the pertinent law and regulations, and

(c) the determination made on the issues and a summary of the reasons therefor.

Under existing practice, only very generalized statements are sent to the claimant. Moreover, the trend in recent years has been for briefer and more generalized denial notices. Undoubtedly some of the reasons for these practices have been the greatly increased workload requirements brought on by SSI. Now that these workloads have been reduced it would appear that the Social Security Administration should consider the advisability of implementing administratively the procedural changes which were included in the Sisk bill.

Another provision in the Sisk bill makes the current face-to-face experiment on reconsideration a statutory requirement which the claimant may take advantage of or waive as he desires. Testimony from all witnesses, including State agencies, at the hearing was favorable to the general concept of the face-to-face interview. Probably the biggest issue concerning this change is how would it be effectuated administratively since in most of the reconsideration cases the issue will be disability and thus, State agency personnel skilled in evaluating disability would be involved. Most State agencies are not decentralized and such a development may entail rather major changes in their current operation. (Moreover, this raises the question of federalization which has been alluded to earlier in Mr. Ball's testimony.)

The subcommittee asked the State agency administrators who appeared before the subcommittee to estimate the cost and administrative ramifications of the Sisk bill. They were also requested to estimate the leadtime required to implement the provisions of the Sisk bill. The results show that all of the seven agencies on the panel believe that the Sisk bill would increase the manpower requirements by at least 10 percent. Moreover, some of the agencies believe it would go to 15 or 20 percent and one of the smaller State agencies believes that 30 to 50 percent was the appropriate figure. The estimate as to leadtime for

implementation varies from 3 months for the decentralized State agencies to 6 months or more for those that are centralized. Also, it should be remembered that the *Eldridge* case has now been argued before the Supreme Court and a decision is expected at the end of the current term. The outcome of this case, if unfavorable to the Government, might require face-to-face "due process" hearings before the payment of social security disability benefits may be stopped. The options for holding these hearings which involve the evaluation of an individual's medical condition are limited to a Federal hearing officer or the State agency.

The Sisk bill also requires that the Secretary shall reconsider an initial decision within 90 days of the claimant's request. The latest statistics available (May 1975) indicate that the median time for reconsideration is 43 days on affirmances and 86 days for reversals. The imposition of such a time limit raises the speed-versus-quality issue discussed briefly in the section on initial determination. Also, the question should be raised as to just how will such a provision be enforced. The requirement is on the Secretary but the performance depends upon the State agency. How would he enforce such a provision and what has been the Social Security Administration's track record on the enforcement of administratively imposed time limits in the past? (Some of the bills in this area, such as Mr. Seiberling's, provide for the payment of benefits if the time limit is not met and provide that such payments would not be recoverable if the claimant is ultimately found not disabled.) If the subcommittee decides to impose time limits, provision should be made for a tolling of the requirement because of a claimant's failure to cooperate in the administrative process. For instance, a major problem, particularly in the SSI program, has been the failure of disability claimants to report for consultative medical examinations which are necessary for the adjudication of a case.

The final provision relating to reconsideration in the Sisk bill is also controversial. It requires the claimant to file for a reconsideration within 30 days from the date of mailing of notice of the initial determination. Some administrators of the program have suggested that reducing the time period of appeal would have a beneficial effect on the social security disability program in speeding up the appeals process. In the SSI program the time for a claimant to appeal is 30 days.

Commissioner Cardwell, in his testimony, recommends that the appeal period be established at 2 months for both programs. Certainly there are definite administrative advantages in providing the same appeal period for SSI and social security, since about half of appealed SSI disability cases are concurrent cases. However, some Members and other witnesses at the hearing have expressed some reservations about the wisdom of reducing the 6-month period for social security. The following statistics from a study of 1972 cases show that approximately 40 percent of those who appeal their claim at the reconsideration and hearing level do so after 60 days.

Hearing	Reconsideration		Hearing	
	Percent	Cumulative	Percent	Cumulative
Elapsed days from date of denial notice to date of filing of appeal:				
0 to 5.....	5.9	5.9	4.0	4.0
6 to 10.....	13.2	19.1	15.4	19.4
11 to 15.....	9.1	28.2	5.3	24.7
16 to 20.....	8.5	34.7	9.1	33.8
21 to 25.....	4.7	39.4	7.0	40.8
26 to 30.....	5.4	41.8	3.7	44.5
31 to 60.....	17.0	61.8	16.0	60.5
61 to 90.....	11.3	73.1	12.4	72.9
91 to 120.....	8.1	81.2	6.4	79.3
121 and over.....	18.8	100.0	22.7	100.0
Mean (days).....		60.9		65.0
Median (days).....		36.0		39.0

Hearings

Status of SSI hearing examiner.—The nature and background of this dispute has been spelled out in the staff committee prints of July 1974, and September 17, 1975. The Subcommittee on Public Assistance has a section in its reported bill, H.R. 8911, which deals with this issue. At our subcommittee hearing it was indicated that the Bureau of Hearings and Appeals could reduce the case backlog to 80,000 cases by June 1976 and to the point in July 1977 where hearings could be completed on a 90-day basis. This estimate appears to be on the assumption that current SSI hearing examiners and temporary black lung ALJ's would have the authority to hear cases under titles II, XVI, and XVIII. Although the Social Security Administration supported such authority, it appears that the Civil Service Commission and the OMB opposed such a development. The subcommittee suggested that Social Security and Civil Service sit down and see if they could work out possible draft legislation that would reflect the administration's position. On October 20, the mutually acceptable proposal was outlined to the Subcommittee at the hearing. It would:

1. Permit SSI hearing examiners, for a 3-year period, to hear not only title XVI SSI cases but concurrent SSI-Social Security cases as well;
2. Specify that SSI hearing examiners would be classified as GS-14; and
3. Change the qualifying work requirements for such hearing officers from 5 years to 6 years.

It was further recommended that this alternative be substituted for the provisions contained in section 3 of H.R. 8911.

Problems With Administration Proposal

1. It does not include the provisions in H.R. 8911 that SSI appeals procedures be made to parallel social security (title II) appeals procedures, thereby doing what most commentators thought Congress had done in the first place, i.e., place SSI hearings under the Administrative Procedure Act. Assuming the subcommittee wants SSI under

APA, the H.R. 8911 provision is necessary to override the erroneous interpretation of the law by the Civil Service Commission.

2. It would raise additional questions as to the legal sustainability of hearings carried out by the Bureau of Hearings and Appeals by allowing non-APA SSI hearing examiners to hear title II cases which have always been considered to be under the APA.

3. It reduces the flexibility of BHIA in dealing with the backlog, in that the extension of authority would be limited to concurrent cases (currently about 17,000 of the backlog) while some 50,000 title II only-disability cases in the backlog would be left untouched. The statistics presented on page 3 indicate that over 70,000 (63%) of the anticipated hearings requests will be title II only disability cases.

4. From a personnel standpoint, it has little rationality in that it authorizes GS-14's for the current GS-13 SSI hearing examiners for a 3-year period and then they would revert back to the lower grade. However, the work they are doing now, during the 3-year period, and when they returned to the GS-13 status, would be of equal difficulty.

5. A substantial number of the current SSI hearing examiners would not be available under the proposal inasmuch as 6 years of legal experience would be required. (Currently SSI examiners can qualify with 4 years experience.)

Staff Proposal

The staff recommends that the subcommittee adopt the provisions of section 3 of H.R. 8911 with several modifications as follows:

1. Adopt the provision in H.R. 8911 (Sec. 3(a)) concerning SSI hearings and appeals. This will place the administrative and judicial appeals procedures on an identical basis with social security with some minor exceptions.⁴

The major impact of this provision, other than clarifying the APA-SSI situation, is the institution of the "substantial evidence" rule for SSI court appeals. The current standard for SSI is that the determination of the Secretary as to "any fact shall be final and not subject to review by any court". The social security standard states that the "findings of the Secretary as to any fact, if supported by substantial evidence, shall be conclusive".

2. Repeal section 1631(d)(2)—this is the controversial section of title XVI which has led to the long term bureaucratic hassle between HEW and the Civil Service Commission. With this provision repealed and SSI clearly under the APA, it would be the ministerial responsibility of the Civil Service Commission to supply adequate registers and HEW should appoint enough regular ALJ's to meet hearing needs under titles II, XVI, and XVIII.

3. Temporary authority would be granted for those SSI hearing examiners (who, up to now, have been appointed under section 1631(d)(2)) to hear cases under titles II, XVI, and XVIII until December 31, 1978. The staff understands that now virtually all the temporary black lung judges hold SSI hearing examiner appointments and this would provide the Bureau of Hearings and Appeals the 200 judges it needs to reduce the backlog. Furthermore, it would, by the end of

⁴ Administrative appeals in SSI must be taken within a 60-day period while social security provides 6 months. SSI hearings, other than disability, must be disposed of within 60 days. No time limits apply in regard to the disposition of social security hearings.

1978, give all SSI examiners sufficient adjudication experience to meet the regular appointment requirements for ALJ's. They would, as they met the experience requirements, be afforded the opportunity to be placed on the register for regular ALJ appointment on a merit basis under the regular Civil Service procedures.

It is hoped, however, that these requirements and procedures will be applied in a manner to effectively serve the needs of the Social Security Act programs. The staff is not convinced that these needs have been adequately served in the past by the Office of the Administrative Law Judges, Civil Service Commission. The performance of this office in overruling the administering agency (HEW) in its legal opinion that SSI was under the APA and in downgrading title II social security adjudications as hearing "little resemblance to the full-blown adversarial proceeding conducted by administrative law judges, under the Administrative Procedure Act, in regulatory agencies" shows a somewhat flagrant disregard of the will of Congress and a propensity to defend to the death its concept of what an APA proceeding is and what the qualifications of the model administrative law judge should be.

The Office of Administrative Law Judge should remember that it is carrying out ministerial responsibilities in supplying registers from which adequate numbers of ALJ's can be hired to adjudicate social security claims. There are indications that in the past these registers have not been supplied with the speed and with the number of candidates thereon which would keep HEW ahead of the hearings backlog. In evaluating current SSI hearing examiners for regular ALJ appointments certainly great weight should be given to experience in actually adjudicating Social Security Act cases and roadblocks should not be created in unduly lengthy and bureaucratic appointment procedures.³ The staff has received a number of complaints from SSI hearing examiners to the effect that applications for the ALJ register have gone unanswered for long periods of time. Moreover, it has been alleged that a number of black lung temporary ALJ's who have, at least on paper, met the qualifications for permanent appointments have been rejected by not having their adjudication experience afforded the consideration it deserves. In view of these allegations, the staff suggests that the GAO assess the fairness and effectiveness of the Civil Service Commission's preparation of ALJ registers.

Now that a majority of the ALJ corps in the Federal Government are working under Social Security Act programs it may be time for the Civil Service Commission to reexamine its ALJ appointment standards to see if they are relevant to the positions that have to be filled. Mr. Edwin Youtman, in his study, questions the qualifying experience requirements in the Civil Service ALJ announcement (No. 318) and its overemphasis on regulatory agency experience. He concludes:

We believe that CSC currently has authority under 5 U.S.C. 3105 to issue a separate set or sets of qualification standards to be used only in the selection of ALJ's for beneficiary hearings. We

³ The SSI hearing examiners went through an appointment procedure almost identical to that used by the Civil Service Commission. See testimony of Wilson Matthews, former head of ALJ office in the Civil Service Commission. The Government makes this point in its memorandum of law in opposing the injunction against the use of SSI hearing examiner which has been filed in the U.S. district court in New Jersey.

make our recommendation on the assumption that the ALJ's selected to conduct beneficiary hearings will not have a second-class status, and that standards and recruitment for this type of ALJ will be adequate to insure a register of quality applicants.

To meet the criticism of the Federal Administrative Law Judges Conference as to possible ambiguity in the interpretation of section 3 of H.R. 8911, the suggested staff proposal would specifically make applicable to the temporary hearing officers APA safeguards of independence from program agency control. These hearing officers (temporary ALJ's) would be subject to all provisions of the Administrative Procedure Act (other than those which governed their initial appointments); Subchapter II of chapter 5 of title 5 of the U.S. Code (the substantive provisions relating to APA adjudications); the second sentence of section 3105, of title 5 U.S.C. (assignment of cases in rotation and the prohibition of assignment to duties inconsistent with their responsibilities as hearing officers); and the deeming of them as hearing examiners appointed under section 3105 so that they would be exempt from agency performance rating requirements (5 U.S.C. 4301(2)(E)) and agency determination of performance acceptability for in-grade increases (5 U.S.C. 5335(a)(3)(B)) and making Civil Service responsible for determining their pay levels (5 U.S.C. 5302), removal for cause (5 U.S.C. 7521), details to other agencies (5 U.S.C. 3344) and general administration (5 U.S.C. 1305). The provisions in H.R. 8911 granting an exemption to the Whitten rider (relating to promotions) probably should be eliminated to be consistent with the intention of freeing these officers from possible agency control. The specific imposition of these provisions should greatly improve the chances of the courts supporting hearings under these provisions as complying with the Administrative Procedure Act and due process.

It would probably be advisable to include language in the report that it is the subcommittee's understanding that hearing officers under the temporary authority should be classified at GS-14.

Provisions in H.R. 3018—the Sisk Bill

Pleadings requirement.—The provisions of H.R. 8018 in the main spell out current hearing procedures with the added requirement that the claimant file for a hearing within 30 days (6 months under existing law) of the reconsideration decision and that he file an answer addressed to the facts and law given for the decision. The time limit issue has been discussed previously. Ralph Abascal, in testimony before the subcommittee, opposes the provision in the Sisk bill (proposed section 205(b)(6) — lines 13-19) which requires the claimant in requesting a hearing to allege specific errors of law or fact in the statement of the case. He notes that failure to do so is grounds for dismissal and the claimant is presumed to agree with any statement of fact not alleged to be in error. Abascal states that such a formal pleading requirement is inappropriate for a group of claimants, the majority of whom are not represented by attorneys.

Coverage of hearings under the APA.—Section 7 of H.R. 8018 is similar to the Duncan bill (H.R. 2995) and similar bills which say that hearings on social security claims shall be "conducted on the record" and shall be subject to all the operative sections of the Adminis-

trative Procedure Act for "adjudications." Under existing law, coverage under the Administrative Procedure Act has been assumed under language which provides for an on the record adjudication but does not use the actual words "on the record." Moreover, the Attorney General's Manual on the APA which was issued in 1947 states that hearings under social security were the type of "adjudications" which were envisioned by the Administrative Procedure Act.

Charles Dullea, Office of Administrative Law Judge, Civil Service Commission, however, inserted the following in the hearing record:

Actually, the Administrative Procedure Act does not fully apply to the Social Security Administration hearing process. It is a hybrid system. There are two pertinent sections of the Administrative Procedure Act: Section 551 of title 5 defines the standard for formal adjudication, i.e., "In every case of adjudication required by statute to be determined on the record". When this standard is met in any legislation, other procedural sections of the Administrative Procedure Act apply; and the second important section—dealing with personnel—is invoked, section 3105, which controls the examination, appointment, classification and independence of personnel. The procedural parts of the Administrative Procedure Act have little, if any, relevancy to the Social Security Administration hearing; the agency does, however, utilize personnel appointed under the act. Whether this is in the interest of the public and claimants is for consideration.

The report of the Civil Service Commission on H.R. 8018 states that although title II ALJ's have been appointed under section 3105 for the last 28 years, there is "selective application of Administrative Procedure Act provisions" so that, in contrast to the regulatory agencies, "the cases they hear are conducted—to the extent administratively feasible—in the manner prescribed by the Administrative Procedure Act." The Commission states that section 7 of the bill in making title II hearings "subject to" the APA and the decisions "adjudications" under the APA would make social security hearings formal and rigid. The Commission's letter states:

To illustrate the distinction between administrative application versus statutory application of the Administrative Procedure Act and the flexibilities of the former versus the rigidification of the latter: Title II hearings are ordinarily conducted with only the claimant coming before the administrative law judge. The judge may speak freely with the claimant in an informal setting as to the reasons why the claimant feels entitled to certain benefits. The judge may invite the claimant to submit any and all evidence and documentation to support his claim. The Social Security Administration has no lawyer present at the hearing to contest the claimant's statements, to refute evidence, to rebut, or to cross-examine. If the provisions of the Administrative Procedure Act were invoked by statute in title II cases, then both parties—the Government and the claimant—would have to be present or represented. The judge would be circumscribed in speaking to one party except in the presence of the other. The proceeding would, of necessity, have to be adversarial and judicialized.

The staff is not impressed with this CSC interpretation of the APA which declares that the H.R. 8018 language would mandate such a

result. Noted administrative law experts testifying before the subcommittee also come to a contrary conclusion. In urging the enactment of "mandatory language which would leave no doubt that it is the intent of Congress" that SSI and social security appeals will be heard by truly "neutral and detached" ALJ's, Richard Keatinge testified:

I am aware that responsible voices argue that welfare programs are different from other programs in which ALJ's function, and that we are inappropriately "overjudicializing" the welfare system. Perhaps, however, "judicialization" is the price for fairness. But I note and take encouragement from those, such as my friend Prof. Victor Rosenblum,* who have correctly stated, in effect, that the APA is not a judicializing straightjacket. Section 553(d) of the APA provides, in part:

"In rulemaking or determining claims for money or benefits or applications for initial licenses, an agency may, when a party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form."

I would like to see that section interpreted creatively by the agencies, the ALJ's, and, when necessary, the courts.

The staff while not agreeing with the Civil Service Commission interpretation does not, at this time, recommend enacting the terminology in section 7 although after more exploration of this issue a contrary opinion may be expressed. At this time we would suggest strong report language to the effect that the committee believes that both social security and SSI cases are under the substantive provisions of the APA and that hearings will be conducted by qualified personnel who are independent of the program agency.

For those hearing officers operating under the temporary authority the staff suggests enumeration of the specific provisions of the APA which would be applicable to them. However, language in the report should state that it is not the intention of the committee to make the Social Security Act appeal an adversary proceeding.

Grade classification of ALJ.—Section 7 of H.R. 8018 provides that the administrative law judge conducting hearings under these provisions shall be not less than a GS-16. At present, the Civil Service Commission has classified social security ALJ's at GS-15 while most of the ALJ's of the other departments and the regulatory agencies are classified at GS-16. The reason for the grade differential is not par-

*Professor Rosenblum testified before the Committee: "The focus of the APA was not on judicialization but on fairness and impartiality in weighing administrative skills and responsibilities. The framers of the APA rightly assumed that there is greater assurance of fairness as well as of expertise of a hearing officer who is insulated from agency pressures and governed directly by Civil Service Commission personnel standards than who is obligated for tenure and examination to the very agency over whose cases he or she presides. Those who fear that Administrative Law Judges appointed pursuant to the APA will rigidify and judicialize our administrative proceedings misconstrue the history, purposes, and practices of APA hearing officers. They also ignore the last sentence of § 553 (d) of the APA which authorizes an agency to 'adopt procedures for the submission of all or part of the evidence in written form' in rulemaking and determining claims for money or benefits when a party will not be prejudiced by it."

"Applicants for benefits or redress pursuant to federal law merit the same degree of competence and impartiality of hearing officers as do parties to FCC, EPC, CAB, or other regulatory agency adjudications. They may not inevitably need, however, to confront witnesses, cross-examine them, or present oral testimony. Section 553 (d) removes any danger whatever that over-judicialization of benefits hearings will stem from their inclusion under the APA. There should be extensive use and expansion of the provisions of § 553 (d) to speed agency hearing processes as well as expansion of the training of APA Administrative Law Judges to assure requisite impartiality and professional skill."

The 1960 Cochrane and Burling study of the appeals system (the Horsky report) found that the non-adversary Social Security Act hearing did not violate section 5(c) or 11 of the APA and "is not to be construed to put unassailable and impossible barriers in the way of a fair adjudicative process, whatever may be its formal trappings" (page 327).

ticularly well-articulated by the Civil Service Commission. Those who defend it speak of more "complex and difficult" cases in the regulatory agencies and the fact that they are adversary proceedings. Other commentators point to a Civil Service bias toward the "pure" ALJ's who conduct regulatory hearings and point out that there is no objective evidence of the greater difficulty in regulatory agency cases. Moreover, it can be argued that the fact that the social security hearing is non-adversary puts a greater burden on the ALJ in that he must develop the case as well as make the ultimate decision. Perhaps a more basic reason for Civil Service opposition to GS-16 for social security ALJ's is the number of positions involved.

The Civil Service Commission report on the bill states:

The effects of the further provision in section 7 of H.R. 8018 with respect to the compensation of administrative law judges in the Social Security Administration is, in the opinion of the Commission, most grave. The Commission has consistently objected to bills which legislate rates of pay. Essentially, the bill would establish several hundred additional supergrade positions and place these jobs outside the numerical limitations for supergrade positions contained in section 5108 of title 5, United States Code. The administrative law judges in the Social Security Administration were reclassified to GS-15 in July 1967. This action was taken in line with the authority contained in section 5362 of title 5, United States Code, which provides that administrative law judges appointed under section 3105 are entitled to pay prescribed by the Civil Service Commission in accordance with the general schedule pay rates. Since the determination of 1967 there have been no changes of any classification significance in the duties and responsibilities of the administrative law judges in the Social Security Administration. The administrative law judges in the Social Security Administration now number 450; they represent more than 50 percent of the total number of such positions in 27 agencies.

The HEW report on the bill further states:

A comparison of the administrative law judge position to the classification of other positions involved in technical matters relating to claims under titles II and XVIII does not support the grade difference which would be created if all Social Security Administration administrative law judges were automatically classified at the GS-16 level.

The only existing supergrade positions in the Social Security Administration's field organization are the 10 regional commissioners, whose responsibilities include overall coordination of all the social security programs in the region, including the non-decisional functions of the Bureau of Hearings and Appeals, and the directors in charge of two of our large program centers. The Department's regional directors and several other senior positions are also supergrades, but the creation of 436 GS-16 positions through a legislative decision on the classification of administrative law judges would not be consistent with the present grade patterns of the Social Security Administration or the Department of Health, Education, and Welfare.

It should be recognized that the grade level of ALJ's throughout the Federal Government is rather chaotic. In recent years there has been a tendency on the part of Congress when it passes a new program to stipulate grade GS-16 for its hearing examiners. An example of this is the legislation on the occupational health and safety program. The Civil Service Commission believes that H.R. 8018 is this type of legislation and states in its report:

*** that legislation which would establish classification or pay of employees by statute is contrary to the clear intent of Congress when it established the classification and compensation system for general application and delegated to the Executive branch the authority to apply them to particular groups of employees. As indicated above, the authority of the Commission to classify administrative law judges appointed under the provisions of the Administrative Procedure Act is contained in section 5362 of title 5, United States Code. H.R. 8018 would nullify this provision of the Administrative Procedure Act insofar as the Social Security Administration's administrative law judges are concerned and would provide an unjustifiable salary rate for the administrative law judges in one agency. This clearly would subvert the congressional mandate that there be "equal pay for substantially equal work" and would lead to severe inequities and imbalance in the classification system affecting the 27 agencies utilizing administrative law judges. The bill would thoroughly distort sound pay administration, lead to increasing demands for preferential treatment from other administrative law judges as well as other occupational groups, and further escalate the cost of personnel services.

On the one hand it can be argued that inasmuch as little evidence other than assertions, has been presented to the Subcommittee that regulatory agency adjudications are more difficult than those under social security, medicare, or SSI, the GS-16 should be established for Social Security Act ALJ's by statute. On the other hand, some would argue, as does the Civil Service Commission, that Congress should not be in the job classification business on an individual program basis. But this then brings us back to the question of whether the alternative to this—classification by the Civil Service Commission—is being done in a fair and equitable manner.

At this stage of the proceedings, the staff supports the theoretical basis for the Civil Service and HEW position but believes that the social security ALJ's are entitled to a reexamination of their grade situation. The staff notes that the GAO has recently instituted a study of the social security hearings process and believe that they should take an independent look at how the Civil Service Commission makes grade allocations for administrative law judges and whether congressional action is required in this area.

Emphasis on judicial functions for hearings officers.—Commissioner Cardwell emphasized at the hearings that the inability of SSI examiners to hear concurrent cases is not solely responsible for the appeals crisis. He noted in the quote found on page 2 of this document the problems of a highly individualized hearing. But he maintained that within a time frame of 2 years "it is our objective to provide

every individual with a hearing decision within 90 days of the request for hearing, excluding and barring any delays caused by the individual or by the need for a consultative medical examination, two circumstances which by their nature will require time". Commissioner Cardwell stated that it is also the objective of the Social Security Administration to remove nonjudicial functions from the ALJ's so that they can hear and render more decisions. The BHA envisions that in fiscal 1976, some 675 hearing officers will be assisted by some 2,000 support staff. Three hundred and twenty-five of these will be staff attorneys, who, acting basically as law clerks, may have a decided impact on ALJ productivity. It is perhaps in the area of case development that ALJ energies are most substantially diverted from their judicial functions and the staff believes that action in this area is an essential ingredient of any major breakthrough in the reduction of processing time at the hearings level. The provisions in H.R. 8018 are designed to improve initial claim development and pinpoint issues so that at the hearings the ALJ's could act as case deciders rather than case developers. This is a laudable objective but one that will take considerable time to be implemented through the State agency mechanism. The suggestion that the social security program agencies or perhaps the offices of the Regional Commissioner should review and develop the case (or request further development by remand to the State agencies) prior to submittal to the ALJ's is an approach which might have a more immediate impact on the reduction of the processing time and should be evaluated for possible administrative implementation.

Appeals Council

There is uncertainty as to the role of the Appeals Council even though about a fourth of the Bureau of Hearings and Appeals staff are engaged or have been engaged in this activity. In answer to a written question submitted by the subcommittee, Commissioner Cardwell has written:

The review by the Appeals Council has been principally a *de novo* review; a fourth level of adjudication. In our opinion, making a fourth evaluation of an individual case has not been a very meaningful role for the Appeals Council. However, the volume of cases before it has inhibited the Appeals Council from taking a more meaningful role. We believe that the Appeals Council function must be restructured to provide more precedent guidance to the presiding officers in order to insure greater uniformity in hearing decisions. The Appeals Council must devote a substantial part of its time to effectively monitoring the hearing and decisional processes. To this end, I believe it must serve more as an appellate body, and it may be necessary to limit the areas wherein Appeals Council review may be requested. The SSI regulations provide for the Council to function more as an appellate body, and similar changes are planned for the OASDI program. In addition, we are considering the legal propriety of:

- (1) eliminating the right to request Appeals Council review, but have the Appeals Council retain the right to review

* There were in fiscal 1975, 22,036 instances of live testimony of vocational experts, over 3,500 live appearances of medical advisers and about an equal number of the use of interrogatories by hearing officers, and finally, there were in excess of 15,000 medical consultative examinations for hearing officers and the Appeals Council.

on its own motion all decisions and dismissals issued by presiding officers;

(2) limiting the right to request Appeals Council review to questions of law, and to objections raised or exceptions taken at the hearing;

(3) providing the claimant with the option of seeking Appeals Council review, or filing a civil action directly from the presiding officer's decision; and

(4) closing the record at the hearing and having any Appeals Council review limited to the record established at the hearing; where the record was inadequate, the case would be remanded to the presiding officer.

The subcommittee staff agrees that allowing a fourth *de novo* review at the Appeals Council level does overdo the open record concept in social security appeals. The Appeals Council should perform basically an appellate function. A possible exception would be the receipt and evaluation of new and significant evidence from the claimant which can justify an allowance without further development. The staff is also concerned with the failure of the Appeals Council to review ALJ's and hearing examiner allowances of benefits for possible error even though it realizes that recent actions in effectuating unreviewed decisions have been done with the idea of reducing processing time. Since April 1975, the review of allowances, which had been reduced from 100 percent to a 5 percent sample in August 1974, was suspended, and the Appeals Council has reviewed only 72 cases on its own motion since that time.^a (During this period, the Bureau of Disability Insurance requested 131 title II own-motion reviews and 17 SSI own-motion reviews). The staff believes that the review of hearing officers' decisions should be greatly expanded and should be carried out by the program bureaus of the Social Security Administration or the office of the Regional Commissioner. Requests from them to the Appeals Council for own-motion review should be on the record in keeping with the requirements of the Administrative Procedure Act.

^aIn fiscal year 1974, 615 disability cases were reviewed by the Appeals Council on its own motion. The figure for fiscal year 1975 was only 297. In fiscal 1975, there were approximately 80,000 disability cases disposed of at the hearing level and the reversal rate was about 50 percent. Mr. Tractenberg testified that the Appeals Council receives about 30,000 requests for review by claimants a year and review is granted in the neighborhood of 12 percent of the cases. In about 50 percent of cases where review is granted the hearing officer is reversed.



Public Law 94-202
94th Congress, H. R. 10727
January 2, 1976

An Act

To amend the Social Security Act to expedite the holding of hearings under titles II, XVI, and XVIII by establishing uniform review procedures under such titles, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1631(c) of the Social Security Act is amended to read as follows:

"HEARINGS AND REVIEW

"(c) (1) The Secretary is directed to make findings of fact, and decisions as to the rights of any individual applying for payment under this title. The Secretary shall provide reasonable notice and opportunity for a hearing to any individual who is or claims to be an eligible individual or eligible spouse and is in disagreement with any determination under this title with respect to eligibility of such individual for benefits, or the amount of such individual's benefits, if such individual requests a hearing on the matter in disagreement within sixty days after notice of such determination is received, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing affirm, modify, or reverse his findings of fact and such decision. The Secretary is further authorized, on his own motion, to hold such hearings and to conduct such investigations and other proceedings as he may deem necessary or proper for the administration of this title. In the course of any hearing, investigation, or other proceeding, he may administer oaths and affirmations, examine witnesses, and receive evidence. Evidence may be received at any hearing before the Secretary even though inadmissible under the rules of evidence applicable to court procedure.

"(2) Determination on the basis of such hearing, except to the extent that the matter in disagreement involves a disability (within the meaning of section 1614(a)(3)), shall be made within ninety days after the individual requests the hearing as provided in paragraph (1).

"(3) The final determination of the Secretary after a hearing under paragraph (1) shall be subject to judicial review as provided in section 205(g) to the same extent as the Secretary's final determinations under section 205."

SEC. 2. Section 1631(d) of the Social Security Act is amended by striking out paragraph (2), and by redesignating paragraph (3) as paragraph (2).

SEC. 3. The persons appointed under section 1631(d)(2) of the Social Security Act (as in effect prior to the enactment of this Act) to serve as hearing examiners in hearings under section 1631(c) of such Act may conduct hearings under titles II, XVI, and XVIII of the Social Security Act if the Secretary of Health, Education, and Welfare finds it will promote the achievement of the objectives of such titles, notwithstanding the fact that their appointments were made without meeting the requirements for hearing examiners appointed under section 3105 of title 5, United States Code; but their appointments shall terminate not later than at the close of the period ending December 31, 1978, and during that period they shall be deemed

Social
Security
Act, amend-
ments,
42 USC 1383.

42 USC 1382c.

Judicial
review,
42 USC 405.

42 USC 1383.

42 USC 1383
note.

42 USC 401,
1381, 1395.

89 STAT. 1135

Exhibit E
White v. Mathews # 77-6015

5 USC 551.

42 USC 405.

Effective
date.
42 USC 405
note.

West Virginia
agreement.
42 USC 418
note.
42 USC 418.

to be hearing examiners appointed under such section 3105 and subject as such to subchapter II of chapter 5 of title 5, United States Code, to the second sentence of such section 3105, and to all of the other provisions of such title 5 which apply to hearing examiners appointed under such section 3105.

SEC. 4. The third sentence of section 205(b) of the Social Security Act is amended to read as follows: "Any such request with respect to such a decision must be filed within sixty days after notice of such decision is received by the individual making such request."

SEC. 5. The amendments made by the first two sections of this Act, and the provisions of section 3, shall take effect on the date of the enactment of this Act. The amendment made by section 4 of this Act shall apply with respect to any decision or determination of which notice is received, by the individual requesting the hearing involved, after February 29, 1976. The amendment made by the first section of this Act, to the extent that it changes the period within which hearings must be requested, shall apply with respect to any decision or determination of which notice is received, by the individual requesting the hearing involved, on or after the date of the enactment of this Act.

SEC. 6. (a) Notwithstanding the provisions of subsection (d)(5)(A) of section 218 of the Social Security Act and the references thereto in subsections (d)(1) and (d)(3) of such section 218, the agreement with the State of West Virginia heretofore entered into pursuant to such section 218 may, at any time prior to 1977, be modified pursuant to subsection (c)(4) of such section 218 so as to apply to services performed in policemen's or firemen's positions covered by a retirement system on the date of the enactment of this Act by individuals as employees of any class III or class IV municipal corporation (as defined in or under the laws of the State) if the State of West Virginia has at any time prior to the date of the enactment of this Act paid to the Secretary of the Treasury, with respect to any of the services performed in such positions by individuals as employees of such municipal corporation, the sums prescribed pursuant to subsection (e)(1) of such section 218. For purposes of this subsection, a retirement system which covers positions of policemen or firemen, or both, and other positions, shall, if the State of West Virginia so desires, be deemed to be a separate retirement system with respect to the positions of such policemen or firemen, or both, as the case may be.

(b) Notwithstanding the provisions of subsection (f) of section 218 of the Social Security Act, any modification in the agreement with the State of West Virginia under subsection (a) of this section, to the extent it involves services performed by individuals as employees of any class III or class IV municipal corporation, may be made effective with respect to—

(1) all services performed by such individual, in any policemen's or firemen's position to which the modification relates, on or after the date of the enactment of this Act; and

(2) all services performed by such individual in such a position before such date of enactment with respect to which the State of West Virginia has paid to the Secretary of the Treasury the sums prescribed pursuant to subsection (e)(1) of section 218 at the time or times established pursuant to subsection

(e)(1), if and to the extent that—

(A) no refund of the sums so paid has been made, or

(B) a refund of part or all of the sums so paid has been obtained but the State of West Virginia has not paid to the Secretary of the Treasury the amount of such refund within ninety

days after the date that the modification is agreed to by the State and the Secretary of Health, Education, and Welfare.

SEC. 7. Notwithstanding any other provision of law, no regulation and no modification of any regulation, promulgated by the Secretary of Health, Education, and Welfare, after the date of enactment of this Act, shall become effective prior to the end of the eighteen-month period which begins with the first day of the first calendar month which begins after the date on which such regulation or modification of a regulation is published in the Federal Register, if and insofar as such regulation or modification of a regulation pertains, directly or indirectly, to the frequency or due dates for payments and reports required under section 218(e) of the Social Security Act.

SEC. 8. (a) This section may be cited as the "Combined Old-Age, Survivors, and Disability Insurance-Income Tax Reporting Amendments of 1975".

(b) Title II of the Social Security Act is amended by adding after section 231 the following section:

"PROCESSING OF TAX DATA

"SEC. 232. The Secretary of the Treasury shall make available information returns filed pursuant to part III of subchapter A of chapter 61 of subtitle F of the Internal Revenue Code of 1954, to the Secretary for the purposes of this title and title XI. The Secretary and the Secretary of the Treasury are authorized to enter into an agreement for the processing by the Secretary of information contained in returns filed pursuant to part III of subchapter A of chapter 61 of subtitle F of the Internal Revenue Code of 1954. Notwithstanding the provisions of section 6103(a) of the Internal Revenue Code of 1954, the Secretary of the Treasury shall make available to the Secretary such documents as may be agreed upon as being necessary for purposes of such processing. The Secretary shall process any withholding tax statements or other documents made available to him by the Secretary of the Treasury pursuant to this section. Any agreement made pursuant to this section shall remain in full force and effect until modified or otherwise changed by mutual agreement of the Secretary and the Secretary of the Treasury."

(c) Section 232 of the Social Security Act, as added by subsection (b) of this section, shall be effective with respect to statements reporting income received after 1977.

(d) (1) Section 201(g)(1) of such Act is amended to read as follows:

"(g) (1) (A) The Managing Trustee of the Trust Funds (which for purposes of this paragraph shall include also the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund established by title XVIII) is directed to pay from the Trust Funds into the Treasury—

"(i) the amounts estimated by him and the Secretary of Health, Education, and Welfare which will be expended, out of moneys appropriated from the general fund in the Treasury, during a three-month period by the Department of Health, Education, and Welfare and the Treasury Department for the administration of titles II, XVI, and XVIII of this Act and subchapter E of chapter 1 and subchapter A of chapter 9 of the Internal Revenue Code of 1939, and chapters 2 and 21 of the Internal Revenue Code of 1954, less

Regulation,
publication
in Federal
Register.
42 USC 405a.

42 USC 418.
Combined Old-
Age, Survivors,
and Disability
Insurance-Incom-
Tax Reporting
Amendments
of 1975.
42 USC 432
note.
42 USC 432.

26 USC 6031.
42 USC 1301.

26 USC 6103.

42 USC 432
note.

42 USC 401.

42 USC 1395.

42 USC 401,
1381.
26 USC 641,
3101.
26 USC 1401,
3101.

Ante, p. 1137.

42 USC 401,
1381, 1395,
26 USC 641,
3101.
26 USC 1401,
3101.

"(ii) the amounts estimated (pursuant to the method prescribed by the Board of Trustees under paragraph (4) of this subsection) by the Secretary of Health, Education, and Welfare which will be expended, out of moneys made available for expenditures from the Trust Funds, during such three-month period to cover the cost of carrying out the functions of the Department of Health, Education, and Welfare, specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1954 other than those referred to in clause (i).

Such payments shall be carried into the Treasury as the net amount of repayments due the general fund account for reimbursement of expenses incurred in connection with the administration of titles II, XVI, and XVIII of this Act and subchapter E of chapter 1 and subchapter A of chapter 9 of the Internal Revenue Code of 1939, and chapters 2 and 21 of the Internal Revenue Code of 1954. A final accounting of such payments for any fiscal year shall be made at the earliest practicable date after the close thereof. There are hereby authorized to be made available for expenditure, out of any or all of the Trust Funds, such amounts as the Congress may deem appropriate to pay the costs of the part of the administration of this title, title XVI, and title XVIII for which the Secretary of Health, Education, and Welfare is responsible and of carrying out the functions of the Department of Health, Education, and Welfare, specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1954 other than those referred to in clause (i) of the first sentence of this subparagraph.

"(B) After the close of each fiscal year the Secretary of Health, Education, and Welfare shall determine the portion of the costs, incurred during such fiscal year, of administration of this title, title XVI, and title XVIII and of carrying out the functions of the Department of Health, Education, and Welfare, specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1954 (other than those referred to in clauses (i) of the first sentence of subparagraph (A)), which should have been borne by the general fund in the Treasury and the portion of such costs which should have been borne by each of the Trust Funds; except that the determination of the amounts to be borne by the general fund in the Treasury with respect to expenditures incurred in carrying out such functions specified in section 232 shall be made pursuant to the method prescribed by the Board of Trustees under paragraph (4) of this subsection. After such determination has been made, the Secretary of Health, Education, and Welfare shall certify to the Managing Trustee the amounts, if any, which should be transferred from one to any of the other of such Trust Funds and the amounts, if any, which should be transferred between the Trust Funds (or one of the Trust Funds) and the general fund in the Treasury, in order to insure that each of the Trust Funds and the general fund in the Treasury have borne their proper share of the costs, incurred during such fiscal year, for the part of the administration of this title, title XVI, and title XVIII for which the Secretary of Health, Education, and Welfare is responsible and of carrying out the functions of the Department of Health, Education, and Welfare, specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1954 (other than those referred to in clause (i) of the first sentence of subparagraph (A)). The Managing Trustee is authorized and directed to transfer any such amounts in accordance with any certification so made."

(2) Subsection (g) of such section is further amended by adding at the end thereof the following new paragraph:

"(4) The Board of Trustees shall prescribe before January 1, 1981, the method of determining the costs which should be borne by the general fund in the Treasury of carrying out the functions of the Department of Health, Education, and Welfare, specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1954 (other than those referred to in clause (i) of the first sentence of paragraph (1)(A)). If at any time or times thereafter the Boards of Trustees of such Trust Funds deem such action advisable they may modify the method so determined."

(e) Any persons the Board of Trustees finds necessary to employ to assist it in performing its functions under section 201(g)(4) of the Social Security Act may be appointed without regard to the civil service or classification laws, shall be compensated, while so employed at rates fixed by the Board of Trustees, but not exceeding \$100 per day, and, while away from their homes or regular places of business, they may be allowed traveling expenses, including per diem in lieu of subsistence, as authorized by law for persons in the Government service employed intermittently.

(f) The Secretary shall not make any estimates pursuant to section 201(g)(1)(A)(ii) of the Social Security Act before the Board of Trustees prescribes the method of determining costs as provided in section 201(g)(4) of such Act. The determinations pursuant to section 201(g)(1)(B) of the Social Security Act with respect to the carrying out of the functions of the Department of Health, Education, and Welfare specified in section 232 of such Act, which relate to the administration of provisions of the Internal Revenue Code of 1954 (other than those referred to in clause (i) of the first sentence of section 201(g)(1)(A) of the Social Security Act), during fiscal years ending before the Board of Trustees prescribes the method of making such determinations, shall be made after the Board of Trustees has prescribed such method. The Secretary of Health, Education, and Welfare shall certify to the Managing Trustee the amounts that should be transferred from the general fund in the Treasury to the Trust Funds (as referred to in section 201(g)(1)(A) of the Social Security Act) to insure that the general fund in the Treasury bears its proper share of the costs of carrying out such functions in such fiscal years. The Managing Trustee is authorized and directed to transfer any such amounts in accordance with any certification so made.

(g) Section 6103 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new subsection:

"(g) DISCLOSURE OF INFORMATION TO SECRETARY OF HEALTH, EDUCATION, AND WELFARE.—The Secretary or his delegate is authorized to make available to the Secretary of Health, Education, and Welfare information returns filed pursuant to part III of subchapter A of chapter 61 of subtitle F for the purpose of carrying out, in accordance with an agreement entered into pursuant to section 232 of the Social Security Act, an effective information return processing program."

(h)(1) Section 230(b)(2) of the Social Security Act is amended to read as follows:

"(2) the ratio of (A) the average of the wages of all employees as reported to the Secretary of the Treasury for the calendar year preceding the calendar year in which the determination under subsection (a) with respect to such particular calendar

42 USC 401.

Ante, p. 1137.

42 USC 401
note.

42 USC 401.

42 USC 401
note.

26 USC 6103.

26 USC 6031.

42 USC 430.

year was made to (B) the average of the wages of all employees as reported to the Secretary of the Treasury for the calendar year 1973 or, if later, the calendar year preceding the most recent calendar year in which an increase in the contribution and benefit base was enacted or a determination resulting in such an increase was made under subsection (a)."

42 USC 430.

(2) Section 230(b) of such Act is further amended by adding at the end thereof the following new sentence: "For purposes of this subsection, the average of the wages for the calendar year 1978 (or any prior calendar year) shall, in the case of determinations made under subsection (a) prior to December 31, 1979, be deemed to be an amount equal to 400 per centum of the amount of the average of the taxable wages of all employees as reported to the Secretary for the first calendar quarter of such calendar year."

42 USC 403.

(i) (1) Section 203(f)(8)(B)(ii) of the Social Security Act as amended—

(A) in clause (I) thereof, by striking out "taxable wages of all employees as reported to the Secretary for the first calendar quarter of the calendar year", and inserting in lieu thereof "wages of all employees as reported to the Secretary of the Treasury for the calendar year preceding the calendar year", and

(B) in clause (II) thereof, by striking out "taxable wages of all employees as reported to the Secretary for the first calendar quarter of 1973, or, if later, the first calendar quarter of the most recent calendar year", and inserting in lieu thereof "wages of all employees as reported to the Secretary of the Treasury for the calendar year 1973, or, if later, the calendar year preceding the most recent calendar year".

(2) Section 203(f)(8)(B)(ii) of such Act is further amended by adding at the end thereof the following new sentence: "For purposes of this clause (ii), the average of the wages for the calendar year 1978 (or any prior calendar year) shall, in the case of determinations made under subparagraph (A) prior to December 31, 1979, be deemed to be an amount equal to 400 per centum of the amount of the average of the taxable wages of all employees as reported to the Secretary for the first calendar quarter of such calendar year."

42 USC 424a.

(j) Section 224(f)(2) of the Social Security Act is amended, in the first sentence thereof, by—

(1) inserting "before the calendar year" immediately after "calendar year", and

(2) inserting "before the calendar year" immediately after "taxable year".

42 USC 418

note.

42 USC 418.

(k) Notwithstanding the provisions of section 218(i) of the Social Security Act, nothing contained in the amendments made by the preceding provisions of this section shall be construed to authorize or require the Secretary, in promulgating regulations or amendments thereto under such section 218(i), substantially to modify the procedures, as in effect on December 1, 1975, for the reporting by States to the Secretary of the wages of individuals covered by social security pursuant to Federal-State agreements entered into pursuant to section 218 of the Social Security Act.

42 USC 1382a.

SEC. 9. Section 1612(b)(2) of the Social Security Act (as enacted by section 301 of the Social Security Amendments of 1972) is amended (1) by inserting (A) immediately after (2), and (2) by adding at the end thereof the following new subparagraph:

"(B) Monthly (or other periodic) payments received by any individual, under a program established prior to July 1, 1973, if such payments are made by the State of which the individual receiving such payments is a resident, and if eligibility of any individual for such payments is not based on need and is based solely on attainment of age 65 and duration of residence in such State by such individual."

SEC. 10. (a) Section 765 (b) (3) of the Internal Revenue Code of 1954 is amended—

(1) by striking the first sentence and inserting in lieu thereof the following: "Beginning with the calendar quarter ending September 30, 1975, and quarterly thereafter, the Secretary or his delegate shall determine the amount of all taxes imposed by, and collected during the quarter under, the internal revenue laws of the United States on articles produced in the Virgin Islands and transported to the United States.";

(2) by amending the first sentence of subparagraph (A) to read as follows: "There shall be transferred and paid over, as soon as practicable after the close of the quarter, to the Government of the Virgin Islands from the amounts so determined a sum equal to the total amount of the revenue collected by the Government of the Virgin Islands during the quarter, as certified by the Government Comptroller of the Virgin Islands."; and

(3) by amending the sentence immediately following subparagraph (C) by striking out "at the beginning" and inserting in lieu thereof the following: "with respect to the four calendar quarters immediately preceding the beginning".

(b) The amendments made by paragraphs (1) and (2) of subsection (a) shall apply with respect to all taxes imposed by, and collected after June 30, 1975, under, the internal revenue laws of the United States on articles produced in the Virgin Islands and transported to the United States.

Shipments
to the U.S.
26 USC 7652.

26 USC 7652
note.

Approved January 2, 1976.

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Senate receded and concurred in House amendments.